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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Wednesday, October 5, 1988

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Collins, Shirley (Wentworth East L) for Mr. Keyes

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Farnan, Michael (Cambridge NDP) for Mr. Hampton

Roberts, Marietta L. D. (Elgin L) for Ms. Poole

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, October 5, 1988

The committee met at 10:34 a.m. in committee room 2.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act.

Mr. Chairman: Will members take their seats, please?

We were to start clause-by-clause this morning. Mr. Philip has placed before you a procedural motion, which I shall read.

Mr. Philip moves that the committee postpone further consideration of Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act, until March 31, 1989.

I should tell you at the outset that in looking at this motion, I have concerns that it may not be in order, but because I have doubts, I am going to give Mr. Philip, as the mover, and anyone else an opportunity to speak to it. However, I am going to give you warning that when I have received information sufficient that the doubt no longer exist, I will cut you off and I will rule.

Mr. Cureatz: Mr. Chairman, could I just hear the last part again about being cut off?

Mr. Chairman: After hearing discussion sufficient to remove the doubt from my mind, I will stop the debate and make my ruling. I could make it at the moment, but I do not intend to. I want to hear some debate on it.

Mr. Philip: Mr. Chairman, I would like some clarification of your last statement. Clearly, under the rules I have a right to present here my concerns about a piece of legislation or about a procedural motion. I am doing that. What I hear you telling me is that somehow, at some time, you are going to arbitrarily say you have heard enough and you are going to cut me off. That to me is closure by the chair and I suggest to you that is out of order.

Mr. Chairman: I did not say that at all. What I said to you was that my initial reaction on reading this motion was that it is out of order. As chairman, I could rule it out of order, but I do not intend to do that because I do have some doubts. I am prepared to hear arguments with reference to those doubts, but if at a point during argument those doubts are gone, then I can revert, I suggest, to the original right of the chairman to rule on the question of whether the motion is in order or out of order. What I am doing is allowing debate because at the moment I am not prepared to make that ruling, as there is some doubt.

Mr. Cureatz: May I speak to your opening—Mr. Philip, do you mind?

Mr. Philip: By all means.

Mr. Cureatz: I am slightly concerned myself, actually. Of course, we appreciate very much your indication that you would hear Mr. Philip's opening motion, but having some slight experience in terms of what some of his concerns are and after the number of weeks, nay, months, we have had with the committee, I can appreciate that he could very well expand his concerns—I am only anticipating what he might say—to cover the various aspects we have heard over the last few months in terms of our public hearings.

I think I can speak on behalf of my colleague. I am prepared to listen patiently and let him express his concerns, but I can understand that he would probably want to cover, you might say, the waterfront. If he so wishes, I think he has every right to do so under the motion.

Mr. Chairman: What I am hearing is argument as to why the motion is in order. I am not hearing argument on the merits of the motion. I am hearing arguments as to why the motion is in order. As I said, my initial reaction is that the motion is not in order. If you wish, I will give you reasons in advance why it is not in order, but I am prepared to allow Mr. Philip the opportunity to at least debate it, subject to the caveat I gave that I will interrupt when that doubt is no longer there and when I feel I can rule that the motion is either in order or out of order.

Mr. Cureatz: I could have a long discussion but I do not want to pre-empt Mr. Philip.

Mr. Farnan: It appears to me there is a distinction. If the motion is in order, as it appears to be, that is fine, and it should be ruled out of order if it is not. But what I hear you saying, Mr. Chairman, is, "I will listen to what's being said and if I don't like what's being said, then I will rule it out of order." To me that appears to be a very undemocratic way of proceeding.

Mr. Chairman: With all due respect, that is not what I said. If you like, I will make the ruling now as to whether it is order and that is nondebatable. I thought what I was doing was being fair in that I am giving Mr. Philip an opportunity to present argument as to why it is in order. If you wish, I can make that ruling right now, but as I say, I do have some questions and I think perhaps Mr. Philip should have the opportunity to argue it. Perhaps I give you a peek into what my—

Mr. Philip: Why do we not do that after I have presented my arguments?

Mr. Chairman: All right; fine.

1040

Mr. Philip: The reason I am presenting what in parliamentary circles is called a hoist motion is that it is fairly clear the government simply has not done its homework before introducing the two pieces of legislation, Bill 113 and Bill 114.

First of all, we know there were no impact studies done by either the Solicitor General (Mrs. Smith) or the Minister of Labour (Mr. Sorbara). The government claims to know how many sales people are working on Sundays, but cannot break it down into who is working for only a few months, who is working

part-time, who is working full-time, how many are students or how many people are only working one day a week.

It is fairly clear that they have not done any impact studies on the effect on the workers in this province. We asked for that. It has been asked for under the Freedom of Information and Protection of Privacy Act by the Globe and Mail. It is fairly clear that those studies have not been done.

One would have thought the government would have at least gone to British Columbia to find out what happened there. Instead, we have an opening statement by the Solicitor General in which she says the domino theory is a myth.

If the Solicitor General had even read the British Columbia newspapers—I am not going to read all of them, but I refer you to the article in the Province of November 8, 1985, in which we see that a large mall—the West Vancouverites, the people in West Vancouver are being forced to open against their will because of the domino theory. Indeed, they say that as a result of surrounding municipalities, they are losing some \$25 million in sales, and therefore the merchants are forcing on their municipality their only other alternative, which is to open on Sunday against their will.

We already know from British Columbia that there are some 55 municipalities, or indeed all the municipalities in the greater Vancouver area that are now open, many of them against their will, as a result of the domino theory that the minister says is a myth. The minister, if she had not done research, could have at least read the newspapers, and she appears not to have done that.

This committee was even denied the right to bring an impartial person from British Columbia. The majority Liberals voted against the Conservatives and New Democrats when we asked that a clerk from any major municipality in British Columbia be brought to Ontario to explain what in fact had happened. This Liberal majority on this committee wanted an apologist for the Vander Zalm government to come, justify and rationalize, but it did not want a clerk from the municipalities.

Similarly, this government has not taken any initiative to study the impact and problems created in New Brunswick by the municipal option. I know from my own travels there and from meeting with Liberal members of the New Brunswick government that they say the legislation has created anarchy in their province and that is why they have legislation rescinding it. Yet we have had no indication from this government that it has even gone to New Brunswick or sent anyone to New Brunswick to study what has happened. I met with the Liberal members of that government. They said it created anarchy, that even in New Brunswick where municipalities are fairly separated, the domino theory was alive and well and creating problems for municipalities.

The Solicitor General claimed there were problems with the tourist exemption, but has not tabled any information on this. Furthermore, when the municipalities asked her to tell them which municipalities had used the tourist exemption, she only provided the information at the time of tabling this legislation. Indeed, she has not yet indicated which municipalities have a problem. Even the crutch package that was supplied to Liberal backbenchers by the Solicitor General contains untruthful statements; that is how bad their research is. It quotes research projects that in fact are nonexistent; that is how bad their research is.

Even the Premier (Mr. Peterson) has been fooled. In a letter to the clerk of the regional municipality of Peel, he states, "The concerns of the retail workers with regard to this initiative"—in other words, Bill 113—"will be addressed by Bill 114, an Act to Amend the Employment Standards Act."

In other words, he is telling the municipalities that the workers are protected. Well, we have heard differently. We have heard differently from the managers of Canadian Tire stores across the province who say this legislation will not prevent any manager from forcing an employee to work. We have heard it from trade unions who say this legislation is not worth the paper it is written on. So even the Premier was misinformed by his minister or by whoever prepared this propaganda package that was sent out to the Liberal backbenchers.

The real myth of course is the myth claimed by the Solicitor General that this will not lead to wide-open Sunday shopping. Of course, we—

Mr. Chairman: I just want to clear up something in my own mind. Is what you are saying by your motion that you wish to have information provided to demonstrate that there will be an impact on retail workers, other than the ones who are presently in the system?

Mr. Philip: No, Mr. Chairman, that is not what I am saying.

Mr. Chairman: Could you please clarify this. Your motion does not address why you want to postpone consideration of the bill. Perhaps you can help me with that.

Mr. Philip: I thought I was elaborating on that, Mr. Chairman.

Mr. Chairman: You are going a little far afield, I am afraid. I would like a little elaboration. Perhaps the other members would, as well. If you can do that, then at least I can follow whether or not you are pursuing that or whether you are pursuing a whole host of items. I have to make a decision.

Mr. Philip: What I believe I have been saying—I am sure Miss Roberts, being very skilled at law, will agree with my summation of what I have said so far—is that the government clearly did not do its homework before it prepared the bill, that it prepared these bills with inadequate information, that it has no impact studies to find out what the impact will be on the existing workers—it does not even know enough about the people who are already working on Sunday and that was clearly shown—and that it has no information yet on the impact in terms of the municipalities and the domino theory that the minister said was a myth. It has not consulted anyone.

I am getting around to my next point: it has not followed the normal procedure, and indeed, the Conservative government before it—I am not a great defender of the previous Conservative government, but at least when it had important legislation that was going to impact on lives—I sat in your chair, Mr. Chairman, as chairman of the justice committee and held numerous hearings on white papers, orange papers, blue papers and every kind of coloured paper that the government would bring out on such matters as family law reform and other matters that affect the family.

Here is a bill that is going to have an impact on the family and yet the government did not follow the normal consultative process the Conservative government followed even in its later years when it was supposed to be so

arrogant and insensitive that even Conservative backbenchers will admit they were not as sensitive as perhaps they should have been. Even in its later years, it would not introduce major legislation impacting on families without turning out position papers, having feedback and having consultation before it brought in the bill. Often, they would do several draft bills that would be sent out and examined before they would bring their final bill to the House.

This whole democratic process of consultation on major issues which the previous Conservative government followed, even in its later, tired years, is not been followed by this government in its early years.

I say to you that without that kind of consultation, you cannot have legislation. We are having legislation, exactly the full impact of which we do not know. We do not know exactly what is going to happen as a result of some of these. It has major flaws, not just in section 4 but in other sections of the bill, and without this kind of knowledge, we have major problems.

1050

The association of municipalities has stated that it has not been consulted, and indeed, as we went around the province we had mayor after mayor, councillor after councillor, alderman—as they are called in some areas—after alderman coming before the committee saying, "Mr. Chairman and members of the committee, why did the government not talk to us before it brought in this legislation?"

Thanks to the survey done by my colleague Mrs. Cunningham, we know that the majority of the people out there have offered to meet with the minister if she so chooses, meet with her staff and put in the kinds of corrections necessary to the existing legislation that would solve the so-called problems. But the minister has not even defined where the problems are. She says that there is a problem with the tourist exemption, but she does not say which municipalities have a problem or what the problems are. She says that some municipalities have abused it, but she does not say which municipalities or what kinds of abuse.

There was very strong evidence that members of this committee were misled in the testimony provided by the Solicitor General (Mrs. Smith) on August 3. She appeared before the committee on August 3. Much of her rationalization for Bill 113 was that the tourist exemption under the existing act does not work. The minister was asked, "did you consult with the Association of Municipalities of Ontario around the definition of 'tourism'?" She responded: "I met with AMO on this. They refused to discuss any of these issues."

I further asked her the question, "Is it or is it not true that you did not specifically ask AMO to assist in coming up with a more workable definition?" The minister replied, "I told them that we did not have one and that this, along with other matters, was our problem. We have had no input back from them."

That is simply not true. On August 9 I was assured by Mr. Hopcroft, testifying on behalf of the Association of Municipalities of Ontario, that at no time had he refused any meeting to assist the minister in coming up with a definition of "tourism." Furthermore, Mrs. Brick, speaking on behalf of the delegation, stated, "We made our offer to sit down and define 'tourism,' and on more than one occasion." In addition, she stated that AMO had repeatedly asked for specific examples of where the municipalities were abusing the

tourist exemption and how many municipalities were using the exemption. She added that AMO had spoken to the Solicitor General three times about this and that the Solicitor General had refused her offer for assistance.

Now, we tried to clarify this matter. I moved a motion, supported by my Conservative colleagues on this committee, that said there seems to be a tremendous difference in fact between the so-called facts presented by the Solicitor General and certainly the statements by the association of municipalities. So that we would not interrupt any of the hearings, I offered that members of the committee would come in early one morning at the minister's convenience and we would sit from nine o'clock until 10 to try to clarify this apparent discrepancy in information. The minister is saying one thing and the municipality is saying that is not true. She is not—

Mr. Chairman: Mr. Philip, how does that assist? I am going to give you the reasons I think there are problems.

First, as you are well aware from being at this Legislature for nigh unto umpteen years, there is a prorogation at Christmas. That is number one as to whether or not this legislation would, in fact, lapse if it is not dealt with, or at least presented back to the House by then. That, of course, is subject to what has been the tradition in the past to keep legislation going, despite the factor of a change of a session. That is my doubt. That is why I have given you—

Mr. Philip: May I address myself to that?

Mr. Chairman: Just a second. That is why I have given you the opportunity to address the matter.

The second point is—and perhaps I should have done this at the outset; it would have allowed you to address your comments to these issues—the second concern I have is the question of whether or not this whole host of information that you have just indicated in your address can be dealt with, or provided, or decided before the date you have put in there, March 31, 1989; because the responsibility of this committee, as directed by the Legislature, although we do not have any specific terms of reference—the bill in itself is terms of reference—indicates that we are to give due and timely consideration to the bill.

Now, if there is information that you are requesting that could be gathered—and I have not kept track of the number of things you have been asking for but, from what I can gather, you are saying that we should essentially, and I hope I am not being unfair to you, go through the whole proceeding all over again and perhaps spend a great deal of time on groundwork that you have referred to—if those things cannot be proceeded with and completed by March 31, and if in fact all it will do is delay the bill, then I suggest that the committee's major function, major responsibility to give due and timely consideration to the bill, as directed by the House, is being breached. That is the second ground.

Now, you may address those two if you would like to do so, but let us not go off on a tangent about other items. I appreciate the things you said at the outset; they certainly address the first consideration. But I would like something to address the second consideration.

Mr. Philip: In the first place, Mr. Chairman, I am not arguing that this committee should be dealing with this bill at this point in time. The

very purpose of my motion is to allow the government time to involve itself in the consultation process, which it obviously has not done, and in the research process, which it has not done, before introducing the legislation. In other words, it should do what a government is supposed to do: Before you introduce major legislation, you should at least get your act together, do research and consult with people who are going to be affected. It clearly has not done this, and what this motion is doing is not keeping this bill before the committee at all. It is saying to the government, "Go out and do the things which a government that has responsibility to govern should be doing before it introduces legislation." There is clearly evidence that it has not done that.

In regard to your next point, I think it can be argued that there is no date by which the House must be prorogued and that it may be reasonable to expect that the first session of the 34th Parliament will not be prorogued before the date specified in my motion. It may also be argued that the practice has been developed in the Ontario Legislature, as you admitted earlier in your remarks, that legislation the consideration of which has not been completed by the time in which parliament is adjourned may in fact be carried over into the next parliament. We have done that on numerous cases with numerous amounts of legislation, both major bills and, indeed, even private members' bills in some cases. This has been done on many occasions in the past decade.

In any event, I think it may be argued that significant consideration can be given to this legislation only if there is proper information, and we have clearly seen that there is inadequate information, that the government has not done its research before introducing this legislation, that we do not have the information but, more particularly, that the government, which has a responsibility to have the information, does not have it. Therefore, it seems absolutely ridiculous to introduce legislation that, if we can learn anything from the Liberal government in New Brunswick, will cause the government to end up coming back in two years to say, "This legislation has created anarchy, and we are going to have to rescind it." Now that, to me, is—

Mr. Chairman: Our function is not to read the future, Mr. Philip. Our instruction from the Legislature is specific: We are to give due and timely consideration to these bills.

Now, it is not a function of this committee to tell the government what job it has done badly or well; it is the function of this committee to seek the information necessary to deal with the bill. So I reject the argument about our waiting for the government to redo the situation or to come up with further information. That is not the committee's function.

Mr. Philip: Mr. Chairman, it is the committee's function to tell the government if it is wrong because it has either inaccurate information—and it has, in the case of what has happened in British Columbia. It is not a myth that a majority of municipalities would be forced into opening. It is the responsibility of the opposition to say: "Here's legislation that is going to be very expensive and you have not costed it. Here's legislation which is going to have a major impact and you have not done an impact study. We will not pass this legislation until you have done this."

1100

It is also the responsibility of the committee to say: "In order for us to deal with a piece of legislation or any other matter, we need information." We are not in a position to do that research. We do not have those research

facilities available, but the government does. It has the civil service, it has the economists, it has all the other people.

It is our responsibility. I say to you that it is absolutely irresponsible if this committee proceeds with this bill in the light of the obvious lack of information and lack of leadership on the part of the government in providing the information we so desperately need in order to make a decision on this bill.

Mr. Chairman: I appreciate your arguments, but you are not really adding much more, with all due respect, to the two issues that concern me about the question of order. If there are any other members who wish to add something that is new, not just a rehashing of what Mr. Philip has indicated, I am prepared to hear them; but if there are none, then I am prepared to make a ruling on the question of the motion before me.

Mr. Kanter: Could you reiterate the two points you feel are relevant?

Mr. Chairman: The first point is that the House normally prorogues for Christmas. I know Mr. Philip has said that may not necessarily be the case, but I am not here to decide on hypothetical facts. That is the normal tradition. The normal situation is that any legislation on the books at prorogation lapses and cannot be brought back unless it is specifically brought back. We know there has been a practice in the past to carry bills, but this has been done on the consent of the House leaders. Again, it is hypothetical that the House leaders might consent to that, so I am not prepared to accept that fact.

The second concern is whether there is some information this committee needs that we cannot obtain before March 31 that is necessary in giving due and sufficient, namely timely—and that is the way it is interpreted, timely—consideration to the legislation.

On both of those grounds, my doubts have been perhaps lessened. I am prepared to hear from other members if they wish to address them, but as I say, there is not much point in hearing a rehashing of what has been said up to this point. If there is something new to be added, I will certainly hear any other members on the matter before I make a ruling. I think I have given you a peek under the corporate veil as to how I intend to rule, but if you can persuade me otherwise, I am prepared to listen.

Mr. Cureatz: I would like to speak to that.

Mrs. Cunningham: I will speak as well.

Mr. Cureatz: If I might be allowed to indicate, I think Mr. Philip is making some very interesting, solid points. We are taking a look at why we should be re-examining this piece of legislation, and he should be allowed a full opportunity to do so.

In terms of your ruling as a chairman, if you decide otherwise, I would ask that all members of the committee be given equal opportunity at least to have the same time as he has been given to express his thoughts and concerns so that we may express our ideas about the proposed motion that we review it until March 31, 1989.

Mr. Chairman: I am not going to say you cannot do that. We have already heard extensively from Mr. Philip. You could almost say, if you agree

with it, "Ditto." I am not going to entertain matters we have already heard. Remember, we are talking about the question of my decision as to whether this motion is in order. We are not addressing the merits of the motion as such. That is the reason I am giving an opportunity to you within the framework of those parameters.

Mr. Cureatz: I appreciate very much your consideration in thinking that my thoughts and comments will be ditto of Mr. Philip's.

Mr. Chairman: I do not know whether they will or not.

Mr. Cureatz: I assure you they will not be, so I will be asking for the same consideration of speaking to the motion. I think my colleague had a thought on it.

Interjection.

Mr. Chairman: I remind you that you are speaking as to whether the motion is in order. That is the ruling I have to make, and if you can persuade me—I can tell you I am not persuaded to this point.

Mr. Cureatz: Every other third sentence will indicate that I feel strongly that the motion is in order.

Mr. Chairman: Go ahead, but I am giving you—

Mr. Cureatz: I do not have the floor yet. I was just speaking to your concern.

Mr. Philip: You have the floor. You are talking to the points he has raised.

Mr. Cureatz: Then may I continue on in support of the motion?

Mr. Chairman: In support of whether the motion is in order. You are attempting to persuade me that it is in order.

Mr. Cureatz: Albeit that I will be interested to see the length of time I will be given, I can only say I full-heartedly support my New Democratic Party colleague in terms of his bringing forward the motion.

We have to give due consideration to all the aspects that have taken place over the last number of weeks that this committee has had the opportunity of touring the province. I have made the point, for those of you who have lost your memories, of specifically indicating particular areas of concerns that various groups have brought to our attention, concerns that I feel very strongly have not been covered by the bill, and as a result, this motion should be given every consideration.

The first thing that came to mind, of course, is the extensive lack of consideration that the bill gives to other ministries. To the best of our knowledge, neither the minister nor any delegations that have come forward indicated whatsoever the impact that this piece of legislation will be having on, for instance, the Ministry of Community and Social Services.

I say to my Liberal colleagues across the way, how many times have we heard from various concerned groups about the impact, for instance, on day care? With this proposed legislation, we have heard that the domino effect

would take place and, with that taking place, that means more workers will be working on Sunday and working on Sunday means the expansion of day care.

We have had no comment, and I have suggested time and time again that the Minister of Community and Social Services (Mr. Sweeney), for whom I have to say I have the utmost respect, come before us; but he has not made himself available to come forward to this committee, as I have asked time and time again. As a result, we should have further consultation so that we can have clarification from that ministry alone to see what kinds of recommendations, what kinds of studies he has made.

In terms of the possibility of wide-open Sunday shopping, I can bring to your attention the concerns that many municipalities have brought forward to us: namely, transportation. I have not heard yet from the Minister of Transportation (Mr. Fulton) about bringing forward concerns in terms of what will take place, of extra funding that might or might not be made available to communities across the province where there will be wide-open Sunday shopping.

I can only remind you that we have had extensive evidence by concerned groups, not only from municipalities, represented by the mayors and councils and various municipal organizations, but also from church organizations of all denominations—

Mr. Chairman: I am going to call you to order. You are not addressing the question under discussion here. The question is whether or not this motion of Mr. Philip's is in order. I am asking you to persuade me, if you can, as to why it is in order. I have given you two specific points, and you are addressing other than that. In fact, you are addressing hypotheticals.

I have to make a decision here, not based on hypotheticals, what might or might not happen. You can save those statements and present them, certainly admirably, if you wish, during the clause-by-clause, but at the moment the question under debate is whether or not Mr. Philip's motion is in order.

Mr. Philip: May I comment on your comments on Mr. Cureatz? Mr. Cureatz is in order, I would argue. The argument I have been making is that the government has not looked at significant aspects of the impact of this legislation. Mr. Cureatz is saying, and has been arguing, that one whole ministry will be significantly affected by this legislation, yet the other two ministries involved in this legislation have not sought a costing of the effect on the Ministry of Community and Social Services or the impact it will have on the operations of that ministry, particularly the day care programs. That is completely in order.

1110

Mr. Chairman: Are you speaking to a point of order, Mr. Philip?

Mr. Philip: I am speaking on a point of order. I am suggesting that your cautioning of Mr. Cureatz is inappropriate.

Mr. Chairman: I am ruling that Mr. Cureatz is addressing the question of whether or not the matter is in order. He is, in fact, addressing his concerns to something that is not under discussion here.

Mr. Philip: I am suggesting—

Mr. Chairman: That is my ruling, and that is not debatable, Mr. Philip.

Mr. Philip: I challenge the ruling.

Mr. Chairman: All right. There is a challenge to the ruling.

Mr. Philip: May we have a recorded vote?

Mr. Chairman: Are we ready to vote?

Mr. Philip: No, Mr. Chairman. I would ask for the normal 20 minutes that will allow me to collect my members, since one of my members had to go to make an important phone call. I know he would want to vote on that so I am asking for a recess of 20 minutes.

Mr. Chairman: Up to the maximum of 20 minutes, Mr. Philip. We stand adjourned for up to 20 minutes or until Mr. Philip has a second member here.

The committee recessed at 11:10 a.m.

1129

Mr. Chairman: We shall resume. Mr. Cureatz, if you have anything new to add to the extensive statements that have been made by Mr. Philip, I will hear them. If they are not new, then I will rule them out of order. That would apply to Mrs. Cunningham and to Mr. Farnan.

Just to re-emphasize, a motion that is not in order is not debatable. I have given you the latitude of persuading me why that might not be the case.

I might add, as well, I would ask the co-operation of the members of the committee at this time to ensure that there are no emergency telephone calls, that there are no emergencies that will require to have members out of here. I would certainly appreciate that co-operation from all members so we can get on with the responsibility we are charged with by the Legislature: to give due and timely consideration to the bill before us.

Mr. Cureatz, if you have anything to add, please continue.

1130

Mr. Cureatz: Mr. Chairman asks me if I have anything to add.

Mr. Chairman: New.

Mr. Cureatz: Even "new" leaves a whole range of possibilities. You ruled me out of order when I brought to your attention the fact that we should be considering the hoist motion because the government has not given adequate consideration to an in-depth review of all the various groups and agencies and ministries which would be affected. I covered for you the Ministry of Community and Social Services. We talked a little about the Ministry of Transportation. Then you indicated to me that I was out of order to even discuss those aspects.

My next line of thought, of course, would be to give some consideration to the Solicitor General (Mrs. Smith) herself, who is bringing in this legislation. I say there has been no consideration of the impact on the police forces.

Mr. Chairman: Mr. Cureatz, I am going to interrupt you again. To begin with, I am not here to deal with hypotheticals. I say they are hypothetical because we have no idea whatsoever in Ontario—let's forget about British Columbia or New Brunswick—about what impact, if any, this will have. If it does, that is a legitimate comment after the fact, but, with the greatest of respect, it has absolutely nothing to do with the question.

I am not going to decide here on hypothetical facts. I have to make a decision based on facts as they exist. If you have something to add that is not hypothetical, I will hear it.

Mr. Cureatz: The facts as they exist, as we toured this lovely province during the months of August and September, were and still are that we have heard nothing from the Solicitor General about the impact on the fine police forces across Ontario of the commencement of wide-open Sunday shopping.

Mr. Chairman: Again, that is hypothetical. You are assuming, and that is the hypothetical, that this is in fact what the legislation will do. I do not know whether it will or it will not. Nobody here does. I am suggesting that it is hypothetical, and I am not going to hear hypothetical facts.

Mr. Cureatz: Then apparently you had expressed some concern about the hoist motion and its limiting date until March 31, whereas the Legislature will prorogue at Christmas. I could bring to your attention and review with you some aspects of Erskine May for his various interpretations of prorogation. I would then suggest to you that the date of March 31 is indeed in order for all those various aspects I have brought forward to you so far; namely, that the government has not had the opportunity or the foresight or the consideration to allow all the various interest groups—and I am only beginning again by refreshing your memory—within the government itself to come forward to indicate the impact the open-Sunday-shopping legislation is going to have on various ministries in the province.

Mr. Chairman: Again, we are not interested in what the government did or did not do. What we are interested in is what this committee did in terms of hearing people. We ordered our business to hear from the people, the groups, within the time frame we had agreed upon. What the government did or did not do is of no significance to the question of my ruling.

Mr. Cureatz: Then what about your consideration on the date of March 31? I thought you indicated to the committee that the motion is out of order because the tradition has been that the House would prorogue in December.

Mr. Chairman: That is right. That is the traditional end of the session. I am not about to entertain hypotheticals as to whether it might continue to March 31. I have to make it based on the facts that are normally the tradition.

Mr. Cureatz: Then I can only bring to your attention my various concerns, as I have reiterated, that the government and all those fine backbenchers have not had sense enough or light enough in their skulls to realize that they have come forward with a piece of legislation which is detrimental to the quality of life in Ontario.

Mr. Chairman: That has nothing to do with the issue that is before me, with all due respect. If you have anything further to add, you may do so. If you do not, we will move on to Mrs. Cunningham.

Mr. Cureatz: You are frustrating me at every turn. I am very disappointed at the manner in which you are handling this very important issue. I will pass on to my colleague.

Mr. Philip: It is called the tyranny of majority government.

Mr. Chairman: Mr Philip, as chairman of this committee, I am attempting to make a decision based on the facts, and I resent that comment.

Mrs. Cunningham, if you have anything to add, in light of the comments I have made to Mr. Cureatz, I will be happy to hear it.

Mrs. Cunningham: I do have some comments and they are based more on the guidelines you gave us for this discussion. I wrote the three of them down.

The first one has to do with the point that Mr. Cureatz was raising and that was the prorogation thing. You have already stated and conceded that there has been precedent where bills have been carried forth. That is new information to me and I find it interesting. I therefore put it to you that if you consider that as one of the parameters of this particular debate, you have lost that one. We have made a point on that in that the March 31 date would be in order, given your own observations. You can tell me I am wrong, but I am trying to speak to this motion right now.

Mr. Chairman: All right.

Mrs. Cunningham: So you have lost on that date. However, I understand what you are trying to do. I may even respect it enough to want to change the date at some point in time, but I am telling you right now that March 31 is in order, given your response to the question put by Mr. Philip. I am new here, but I heard what you said.

On the second point, I think you were wrong to even consider ruling Mr. Cureatz out of order, because your second point was getting a host of information, to use your own words. We could speak to this necessary host of information—and that is what you said—as part of the parameters of this debate. I would like to speak to that one right now and I would like you to say that I am in order in speaking to it. You gave me the parameters.

Mr. Chairman: No, I did not. I said Mr. Philip, when the opportunity was granted to him, gave a whole host of arguments. I did not cut him off. We already have that information before us. What I am suggesting is that if you can give us anything new with reference to assisting me in making the decision, I will hear it.

Mrs. Cunningham: I think this whole motion is talking about the reasons we should postpone further consideration of the bill. That is what it is about?

Mr. Chairman: Yes.

Mrs. Cunningham: I want to speak to that. It has to do with information that I think we need before we make the decisions that we are about to make over the next three days. That is what I would like to speak to.

Mr. Chairman: If it is anything new, other than what Mr. Philip has already advised us of, I am prepared to hear it.

Mrs. Cunningham: I may touch on some of his stuff, because I was not prepared for this, but I am going to talk about it right now.

Mr. Chairman: If you do, I will let you know.

Mrs. Cunningham: I am sure you will.

I guess this motion is probably one of the most important motions the committee will have to deal with. I say that for these reasons. When the Solicitor General first introduced this legislation, I was very careful to listen to the reasons why, because I do think, as Mr. Kanter stated, this government has an important public agenda. In fact, he has stated that he has a more important public agenda than this particular bill, and that may be so.

Given the reasons for this particular public agenda as put forth by the Solicitor General on August 3, I have to tell you that I think you need the information just to deal with her reasons for having to table this bill at all.

I want to hear the answers to these two questions, and that is why I think this motion is in order. Here is the first one.

I do not think you change things unless you have to change them for good reasons, and these were her good reasons for change. The first reason she put forth was that the law is not presently enforceable. I have raised it time and time again. I do not want the answer to that question to be given to me in 10 seconds before somebody is forcing through or pushing through some amendment to this bill. I want it up front. I have asked for it; I think it is fair.

With due respect to you, Mr. Chairman—and here goes a compliment to you—

Mr. Chairman: Do not ruin my day.

Mrs. Cunningham: —we did get some good information, which I think is important for the deliberation of one of the clauses which I understand Mr. Kanter is anxious to debate. I am happy about that. It has to do with drugstores. We asked the question, we got the information and the research staff was able to provide me at least—and I think others—with what we wanted.

I have other information I need, and I am demanding that we get an answer to that first question. I think if you bring something forth and you give two strong reasons for bringing it forth, the public in this province has a right to know just what the reason for the lack of enforceability is. That is a broad statement, I understand that.

My second question and the information I need, speaking to this point on information that we need in order to make a decision, has to do with the fact—and I tried this one last week—that "tourism" could not be defined. That is another reason we need this motion. The committee did not like my motion last week. It did not think there was enough time to do it, and Mr. Kanter came back and said, "Look, we've got more important things to do."

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We have been meeting for 24 days of public hearings. We have had 269 presentations across this province. Of those, 217 groups and individuals really want a common pause day. I am leaving the drugstores out; that is why the number is somewhat lower. If you want to take a look at it in another way,

that is fine; I do not want to play with statistics. I am being honest. We have a philosophical difference, but what I am trying to do here is make an impact and say, "Look, this may not be our important public agenda, but it sure is the public's."

Now, 212 of those presenters said they would assist in the definition, and I think we need that information. If that is one of the ground rules—and I can tell that you are just getting ready to call me out of order.

Mr. Chairman: Yes.

Mrs. Cunningham: I am very perceptive. When you work together this long, you get to know how people look at you, and you were just about to do it.

Mr. Chairman: Let me tell you why I am going to rule you out of order, and you can remedy it, if you wish. Under the standing orders, you are reflecting upon a previous vote of the House, i.e., this committee. Unless it is your intention to move that it be rescinded, you are out of order.

Mrs. Cunningham: Okay, let me try to put it another way. Do you know what is really tough about this? In trying to present it in an honest fashion, you get yourself into technical difficulties all the time, but I think you know what I am trying to do.

Somehow, if you did not like the way I presented it last week—and I do respect that observation, Mr. Chairman—there may be another way to do it that the government will be happy with. That is my point now. If you do not want to send the letter out and do it that way, there may be another way to do it.

We spent a lot of money and time travelling around this province, and those are the two underlying facts that the Solicitor General brought to our attention. She said we have a problem. Right back came these 217 groups and individuals who said, "If you've got a problem, we'll help you with it." We need the information. That is my point.

Mr. Chairman: We will move on to Mr. Farnan, and you can consider whether—

Mrs. Cunningham: I have four more new concerns.

Mr. Chairman: All right. You can consider whether it is your intention to move that it be rescinded.

Mrs. Cunningham: I do not know how you are going to work the clause-by-clause thing, but I am a titch nervous.

Mr. Chairman: I am sitting on the edge of my chair wondering how we are going to do it too, but go ahead.

Mrs. Cunningham: Let's face it. I am new here. I am going to quote you on this, because it was not very responsible, Mr. Chairman. You talked about its not being our function to read the future. I am telling you, to pass legislation in this province without understanding the impact on the future—and okay, I think the extended Sunday opening is something that you are not prepared to measure, and that is probably fine—and not looking at the impact on other ministries, would be irresponsible.

Let me now raise my other three points, because they are looking to the future.

Tourism and Recreation: I discussed with members of that particular ministry of our government some of my concerns, and they share them. Are we going to have an opportunity during the clause-by-clause to get that particular group to come to us? That is a question. That is why this motion is in order.

Do you want to do it during clause-by-clause, when we are about to fight over some amendment, or do you want to do it in a very objective, open and honest way and say, "Here are the concerns of that particular branch of our government if this bill is passed"?

I am not quite certain how paid help come in here and tell us what their concerns are, especially with you people being so adamantly opposed to getting good information. If you vote this motion down, that is what it says. That is one.

Mr. Chairman: If I can just stop you there, you have not quite accurately quoted me.

Mrs. Cunningham: Do you want to answer that question?

Mr. Chairman: Do not put me into a box with any committee member. I said that my responsibility as a chairman is to make a decision based on the facts as they exist, not what may happen or may not happen. That is what I said. Okay? But go on to your next point.

Mrs. Cunningham: Not "to read the future"—and I am pretty good at this stuff, I want you to know; my kids think I am terrific at it—but what you did say was, "seek the information to deal with the bill." Those were your words.

Tourism is very important. We should be talking to those people.

Okay, let's get on to the next one. Mr. Sorbara, when he was here on August 4, acknowledged publicly—and you can look at Hansard if you want to—and certainly privately, as I ran after him to try to get his attention, that there were certain weaknesses that dealt directly with labour relations law.

Is it the intent, and I am asking you now, because if this thing does not fly, I want to make sure we are going to get the information during the clause-by-clause stuff, so I am asking you—

Mr. Chairman: Do not ask me, ask the fellow who is the assistant for the—

Mrs. Cunningham: No, you are the chairman of the committee and I want to know that I am going to get this information. Will Mr. Sorbara or somebody from the Ministry of Labour come forth and talk to us about Bill 114 and the weaknesses that pertain to the criteria used by the referee? There were a number of them and he admitted them openly.

I do not know what your amendments look like. I do not really care what they look like. I want my questions answered before I put my mind to debating anybody's amendments, including our own. We have tried to get the answers on our own, but I want it open and public before this committee. That is going to take sometime.

Can you answer that question? I have four others.

Mr. Chairman: I cannot answer that question, but certainly during clause-by-clause, if you introduce amendments that are geared towards rectifying what you see as an absence in the bill, you are entitled to argue that at that point. It really has nothing to do, with the greatest of respect, with the question of whether this is in order or not.

Mrs. Cunningham: That is that we postpone further consideration of the bill and I am giving you the reasons for postponing it. I think I am right on when it comes to a point of order right now. I am telling you why we should postpone further consideration: because I need information and I think the whole committee needs the information. Okay?

Mr. Cureatz: I am glad he is listening to you this morning. He was not listening to me.

Mrs. Cunningham: With due respect, I think, Mr. Chairman, you were more concerned about this visionary thing than anything else, and I am trying to be specific to the clauses.

My colleague talked a little bit about the Minister of Community and Social Services. I am more concerned now about talking to the municipalities, and I think we do need a vision here, about the impact of this bill on the cost of—I am going to say the three things, and they will be the same but there is another hook to it that is different: day care, transportation and enforcement. You are saying if it is not specific, I should not talk about it, but there are other bills and other laws within this province that impact differently on each of those items.

A couple of them are pending. A couple of them are amendments that we are looking at. One of them comes out of the more recent report tabled by the Minister of Community and Social Services, the Thomson report, where in fact it says that one of the things this government is going to be looking at is paying 100 per cent of the cost of day care. That was one of the recommendations. It would be a provincial cost.

What are the implications on those kinds of services that we all know will have to take place if even one municipality opens up on Sundays? I think we should be able to understand it, just so that we can give the information back to the public which has elected us and which really does want to understand the implications of this bill. I am not able to do that yet and I promised them on Saturday, as we had a little bit of an open house in London, I would get the answers to these questions.

If I am asking them, I expect other members of this committee will also be asking the same questions. We are not all involved in everybody else's portfolios from time to time. I happen to have a few more than some of you do, but that does not matter.

The next point I would like to make is on your third point, Mr. Chairman. You talked about the responsibility of this committee with regard to due and timely consideration of the bill. I would like to speak to that part that you said was most important to this debate on this motion.

If we have really had this much public reaction and we really have only had—and this is a very soft number; I am being very kind in saying that nine out of the 269 presenters thought there was something good about the bill.

That is not a lot of support for this legislation, and if that is all we got, I guess we could all look at who they were. Who cares, really? The numbers speak for themselves.

Mr. Philip: What was your count again?

Mrs. Cunningham: Nine out of 269 were in favour.

Interjection.

Mrs. Cunningham: Well, subtract, I am not in the mood right now.

Mr. Chairman: Mr. Philip, Mrs. Cunningham has the floor.

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Mrs. Cunningham: The point is that we did not get a lot of support for this legislation. I think if the responsibility of this committee is due and timely consideration of the bill, there are some 15 points that we need clarification on as a result of the public input that I have documented. I want to make sure right now that we are going to have time for me to get my questions answered during the ongoing debate of the clause-by-clause. I think it would be much more sensible for us to table the technical questions we have in relationship to this bill as a result of this motion and take the time to do it appropriately.

Mr. Chairman: Mr. Farnan, if you have anything new to add.

Mr. Farnan: Of course, Mr. Chairman. As you know, on August 17 in Collingwood, I described this process as a sham and a farce and nothing I have seen this morning has changed my mind. I realize you have some dirty work to do and you would like to do it as quickly and expeditiously as possible so that it is not left lingering and stinking in the public's perception.

Mr. Philip: During a federal election.

Mr. Chairman: That is not my objective. Go ahead.

Mr. Farnan: Let me say there are many areas we do not have study on. I want to remind the committee of the delegation in Orillia when we were presented with paintings by children of retail store workers—250 paintings—showing how having their mom, dad or guardian working affected their lives.

What impact study has been done on the children of retail workers in jurisdictions where their parents must work? None. The children of this province are our most precious resource and we are prepared to have legislation that could negatively impact on the children—the future of our society in Ontario—without seriously contemplating how that future will affect them.

I heard one delegation ask, "Have you ever seen a parade go down the street on a Tuesday?" or "Have you ever taken your children to the park for a picnic on a Wednesday and felt you were there by yourself?" What is the impact? Who attends community events? What is the effect on community events in jurisdictions? We have not studied these question, yet it is forge ahead, let's do this quickly, let's cut debate.

Across the hall, we have another committee meeting on education. Have we

seriously examined the impact of this legislation on education? Should we be looking at impact studies on education? Mr. Radwanski has already said that work of students is a serious impediment to achievement and has very serious recommendations. The right hand of this government does not know what the left hand of this government is doing, and we need impact studies again to see how we are negatively impacting upon the children of this province.

Mr. Chairman: I know you speak with passion about what you speak, but again I have to remind you that this is hypothetical.

Mr. Farnan: No. Impact studies are not hypothetical.

Mr. Chairman: No. It is hypothetical in that we have no way of knowing in this province what the effect of this legislation might be and, therefore, we have no way of knowing who, if anybody, will be required to work on Sunday. If that is the case, how could you possibly come up with a precise impact study on the effects of this legislation?

Mr. Philip: British Columbia.

Mr. Chairman: Mr. Philip whispers British Columbia, but I said—

Mrs. Cunningham: How about Detroit? I just got back from Detroit.

Mr. Farnan: Massachusetts.

Mr. Chairman: I am concerned about the question of Ontario. That is all I am charged with the responsibility for. I am not charged with the responsibility of BC's legislation or New Brunswick's. I have to make a decision on this motion before us. Let's get to that.

Mr. Farnan: I appreciate your judgement and I am simply pointing out for the benefit of this committee that as we go to clause-by-clause and as we consider this particular motion, there are areas of impact studies which have not been taken. My colleague Mr. Philip referred to other areas and they were considered legitimate. We spoke on those other areas and you accepted that point as he spoke. Why, when I speak of impact studies on other areas of significance, am I ruled out of order?

Mr. Chairman: For the same reason I ruled Mr. Cureatz and Mrs. Cunningham out of order.

Mrs. Cunningham: You did not rule me out of order.

Mr. Chairman: Well, Mr. Cureatz. I would not want him to think I was playing favourites.

I am saying to you that my responsibility—let's forget about whatever is going on out there—is to make a ruling on this on the basis of the facts as they exist, not hypotheticals. You are not assisting me with hypotheticals.

Mr. Farnan: In speaking to the motion, the motion suggests there be a time frame in which there can be a further accumulation of facts. The motion does not state what that accumulation of facts would be. In order to make a valid judgement as to whether it is worth while to wait this period of time, surely to goodness you should hear what facts might be accumulated. Are you saying we should make a judgement not to put this off for, say, 12 months and are you saying to me, "I am not going to listen to the kinds of facts that could be accumulated in those 12 months that could influence the decision"?

Mr. Chairman: I am not going to debate it with you. You are out of order and I so rule.

Mr. Farnan: I would like to get this on record.

Mr. Chairman: Fine. You are out of order and I so rule. It is nondebatable.

Mr. Farnan: On the record, I would like to suggest to you that there are other areas—

Mr. Chairman: It is nondebatable. Mr. Farnan, come to order. You have the opportunity to appeal the chairman's ruling if you choose to do so.

Mr. Farnan: You are carrying out the directions of the Premier (Mr. Peterson), the Solicitor General (Mrs. Smith)—

Mr. Chairman: I am carrying out nobody's directions. I resent that comment. I have heard sufficient information and I am prepared to make a ruling.

Mr. Farnan: I challenge the chair.

Mr. Chairman: All right. There is a challenge to the chair on the question of whether—

Mr. Cureatz: Wait a minute. Let's refresh everybody's memory. Was the whole issue not whether I was in order in support of the motion?

Mr. Chairman: That is right. I have ruled Mr. Farnan out of order, and he has now challenged the chair. Those in favour of upholding the chair?

Mr. Farnan: Let's see all the hands.

Mr. Chairman: Those opposed? Carried.

Mr. Farnan: Performing seals is what we have here.

Mr. Chairman: Mr. Farnan, if you are going to continue to make those comments, they are not appreciated. They are not helping the committee.

Mr. Farnan: The committee is a joke.

Mr. Chairman: I am prepared to make the ruling. The reason I heard debate was because on the first question of whether the legislation would die on the order paper as a result of prorogation, there has been in the past the possibility that with the House leaders' consent that legislation might continue to the next sitting. Our obligation is to give the bills referred to us due and sufficient—that is interpreted as meaning timely—consideration.

There are two reasons why I am ruling the motion out of order.

Mr. Cureatz: Why I was out of order?

Mr. Chairman: No. Why the motion is out of order.

Mr. Cureatz: Can we have a vote on whether I was in order?

Mr. Chairman: There is at least a danger that the postponement

requested will cause the legislation to lapse and, if that occurs, this committee will have disobeyed the clear instructions of the House to give due and sufficient consideration or timely consideration to Bills 113 and 114.

Mr. Cureatz: On a point of order, Mr. Chairman: Not that I want to unduly prolong this morning's dilemma, but are we going to be speaking to whether I was in order? Were we not supposed to have a vote on that? You ruled me out of order and we—

Mr. Chairman: I ruled you out of order and you did not appeal the chairman's decision, so it stands. That has been done already.

Mrs. Cunningham: Mr. Philip appealed it.

Mr. Chairman: That is right. Mr. Philip appealed it and there was a vote on it.

Mr. Cureatz: No. There was not a vote on it.

Mr. Philip: There was not a vote on it.

Mrs. Cunningham: That is right. We did not take a vote. Let's have a recorded vote now.

Mr. Chairman: Would you like a recorded vote now, Mr. Cureatz?

Mr. Cureatz: Yes.

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Mr. Chairman: The question was whether or not my ruling Mr. Cureatz out of order was a proper decision.

The committee divided on the chairman's ruling, which was upheld on the following vote:

Ayes

Chiarelli, Collins, Hart, Kanter, Roberts, Sola.

Nays

Cunningham, Cureatz, Farnan, Philip.

Ayes 6; nays 4.

Mrs. Cunningham: May I ask a question?

Mr. Chairman: May I continue?

Mrs. Cunningham: On a point of order then.

Mr. Chairman: I am in the midst of giving you a decision.

Mrs. Cunningham: I know, but that is something else. My head is not around that. My head is still around this one. I have to know. I have a point of order and I have to know.

Mr. Chairman: Point of order.

Mrs. Cunningham: If you call someone out of order and then the chair is challenged and then you allow him to speak for another nine minutes—

Mr. Chairman: Allow whom to speak?

Mrs. Cunningham: Mr. Cureatz, which you did.

Mr. Chairman: I called him out of order on the specific points he was raising.

Mrs. Cunningham: Do not get angry. I just want to understand the process.

Mr. Chairman: Okay. I called him out of order on the specific points that he was addressing his matter to. He changed after that.

Interjection: No, he did not. He did not speak to it after that.

Mr. Chairman: He did not speak to it after that. You did.

Mrs. Cunningham: Oh, he changed.

Mr. Chairman: Or he deferred in favour of you. Okay?

Mrs. Cunningham: No, I think you chatted. Is Hansard here today?

Mr. Chairman: Yes.

Mrs. Cunningham: I will try to understand what is happening by reading whatever it is, but I do not think you let someone talk for nine minutes and then call a vote 20 minutes later.

Mr. Chairman: I am a very friendly guy.

Mr. Cureatz: I would like another point of order. What time does the committee adjourn?

Mr. Chairman: I am going to get on with my decision, Mr. Cureatz.

Mrs. Cunningham: I do not think you should rush your decision, Mr. Chairman.

Mr. Chairman: The second reason is I have not been convinced that there is information that is necessary to the committee proceeding with consideration of the bills at this time. Accordingly, "For a committee to endeavour to dispose of a bill"—and this is from that nice big fat book you have in front of you—"which has been committed to it by adjourning sine die, or to some distant day, would be inconsistent with the duty imposed on the committee by the order of the House committing the bill to the committee."

Mr. Cureatz: What page is that?

Mr. Chairman: Page 670. For all those reasons, I rule that the motion by Mr. Philip is out of order.

Mrs. Cunningham: It is the only one you know.

Mr. Philip: I would like a recorded vote on that, Mr. Chairman.

Mr. Chairman: Are you appealing the ruling of the chair, Mr. Philip?

Mr. Philip: I am appealing the ruling of the chair.

Mr. Chairman: Mr. Philip is appealing the ruling of the chair. He has asked for a recorded vote.

Mrs. Cunningham: Mr. Chairman, could you just read that last part again?

Mr. Chairman: What?

Mrs. Cunningham: I would like you to read that last part. You read very quickly and I did not quite get the whole thing.

Mr. Chairman: Mr. Cureatz has got it there.

Mrs. Cunningham: Do not call the vote until we have read it. Say it again loudly.

Mr. Chairman: "For a committee to endeavour to dispose of a bill which"—

Mr. Cureatz: Wait a minute. Top of the page.

Mrs. Cunningham: Okay. Got you.

Mr. Chairman: "For a committee to endeavour to dispose of a bill which has been committed to it by adjourning sine die"—that is without a date—"or to some distant day, would be inconsistent with the duty imposed on the committee by the order of the House committing the bill to the committee." There are further items, but they are not relevant.

We are in the midst of a vote. Mr. Philip has appealed the ruling of the chair, and we are ready to take the vote. It is a recorded vote.

The committee divided on the chairman's ruling, which was upheld on the following vote:

Ayes

Chiarelli, Collins, Hart, Kanter, Roberts, Sola.

Nays

Cunningham, Cureatz, Farnan, Philip.

Ayes 6; nays 4.

Mr. Philip: Mr. Chairman, I have a new procedural motion, which I would like to table with you.

Mr. Cureatz: Before we continue with that, Mr. Chairman, what time is the committee adjourning?

Mr. Chairman: There is no agreement. If the committee wishes to discuss the question of unanimous consent as to a timing—we have been very flexible. We have been prepared to sit longer or shorter depending on the number of delegations.

Mr. Cureatz: In standing orders I think there is a time.

Mr. Chairman: No time. Does somebody wish to suggest a timing? If we can have unanimous consent—

Mr. Cureatz: The standard timing of committees is 10 a.m. to noon and 2 p.m. to 4:30 p.m.

Mr. Kanter: Mr. Chairman, we did not start until 10:30 this morning. I suggest we go on a little longer, and then perhaps reconvene at 2 p.m.

Mr. Chairman: From 10 to 12:30 and 2 to 4:30, is that what was suggested?

Mr. Philip: I have to meet with another committee. How about 12:15 as adjournment today? Then we can worry about adjournments on other days accordingly.

Mr. Chairman: Let's set the rules now so that we do not get into this again.

Miss Roberts: Because of what Mr. Philip has just done, that is, presented another motion, he is going to want to speak to it, I assume. It is a procedural motion. He has just presented it and we have not had a chance to see it. I suggest that we have that procedural motion duplicated for the rest of us to look at. Mr. Philip will wish to have a period of time to prepare his arguments with respect to it. I suggest we should adjourn as soon as—

Mr. Philip: An excellent idea. Would you like me at least to read the motion so that everyone knows what it is?

Mr. Chairman: I will read it. I am charged with the responsibility of reading it.

Mr. Philip moves that the committee postpone further consideration of Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act, until November 30, 1988.

I am looking at this motion. As it was not debatable before, I have heard all of the information on it before and I am ruling for the same reasons that I ruled before that this motion is out of order.

Mr. Philip: On a point of order: Your argument on my last motion was that the committee had before it some legislation that it has been instructed by the House to deal with, and because of the prorogation at Christmas-time, the motion would be out of order.

What I have done in my second motion is move up the date. That would allow the government time to collect some information, anyway, the information that it did not have at the time it introduced these ill-conceived, poorly thought out pieces of legislation. It meets your deadline by allowing it to come back before the Christmas recess.

I do not know. If you are afraid that you are going to miss your Christmas holidays, I say that the people of Ontario would like us to sit over Christmas if it is to deal with something as important as their children and the amount of work they are going to do.

Mr. Chairman: I am not afraid of missing my Christmas holidays at

all. We missed them last year and I anticipate we will probably miss them again this year.

Mr. Philip: Would you not agree that my second motion meets with your objectives?

Mr. Chairman: No.

Mr. Cureatz: We should all have an opportunity of speaking to that.

Mr. Chairman: No. I have ruled it out of order. It is nondebatable. I have heard all of the submissions that were made on the last motion. I am not about to allow debate on this motion. I, therefore, rule it out of order. You have the opportunity, if you wish, to appeal the ruling of the chair.

Miss Roberts: I move that we adjourn for lunch.

Mr. Chairman: You cannot move adjournment until we have dealt with this question.

Mr. Philip: A motion to adjourn is not debatable.

Mr. Chairman: It may be nondebatable, but I do not think it is a motion that can be made while there is—well, there is no motion on the floor. All right, a motion for adjournment has been made. Those in favour of adjournment?

Just a second. Do it again.

Mrs. Cunningham: It lost.

Mr. Cureatz: They are just thinking about it.

Mrs. Cunningham: Come on. I mean, if the shoe was on the other foot—

Mr. Chairman: Those in favour of adjournment? Those opposed?

Mr. Philip: It is a tie vote.

Mr. Chairman: I have to vote for the continuation of the hearing and I so vote.

Motion negatived.

Mr. Chairman: Mr. Philip, I have made my ruling. What do you wish to do, if anything?

Mr. Philip: I challenge the chair on the ruling.

Mr. Chairman: There is a challenge to the chair. It is nondebatable. Do you wish a recorded vote?

Mr. Philip: I wish a recorded vote.

The committee divided on the chairman's ruling, which was sustained on the following vote:

Ayes

Chiarelli, Collins, Hart, Kanter, Roberts, Sola.

Nays

Cunningham, Cureatz, Farnan, Philip.

Mrs. Cunningham: I have a question on process again. I would like to ask where the minister is. I was with her on Saturday evening, and she said she would be here today. I am wondering if she is well.

Mr. Chairman: I have no idea where the minister is. You can perhaps ask Mr. Kanter. He may be able to tell you. I think it is something, with all due respect, that it is not a point of order.

Mrs. Cunningham: I think she wanted to be here, and I am just wondering why she is not. That is all.

Mr. Kanter: Perhaps I could respond to that. The minister is in cabinet this morning. The minister will make herself available to the committee if the committee would like to have her here for clause-by-clause.

I might direct the attention of Mrs. Cunningham and all members to Hansard. When she was asked, I think by you, Mr. Chairman, "Will you be back, minister, for clause-by-clause consideration?" she replied, and this is on page J-84 of my Hansard, this loose-leaf copy—

Mr. Chairman: She indicated that you spoke for her, as I recollect.

Mr. Kanter: —"I am available to the committee. I wish to be most co-operative with the committee. You may want at that time," referring to clause-by-clause consideration, "just to have me in the background since Ron will have done all the work, or you may wish my attendance at some or all of it.

"I assure you that I want to co-operate with the committee. But I think it is important that it be done in a way that does not result in my stepping in and then putting us back at the beginning. That is all. If it has made progress, let's stay with the progress we have made."

That was her position then. That continues to be her position now.

Mr. Philip: On the point of order—

Mr. Chairman: It is not a point of order. I allowed Mr. Kanter to respond to Mrs. Cunningham. It is not a point of order. I think we should move on.

Mr. Philip: Then I have a point of order.

Mrs. Cunningham: I am not finished, Mr. Philip, if you will wait just a second. I am sure you are on the same point. I had a feeling that the minister wanted to be here—

Mr. Chairman: I am getting an exceptional headache.

Mrs. Cunningham: —and I would like the minister to be here,

personally. We have all been travelling for eight weeks and, obviously, this is an important bill to the public. I think she should be here. That is my point. I would like Mr. Kanter to take that message to the minister.

Mr. Chairman: I think he has got it. We are going to move on to the next order of business—

Mrs. Cunningham: Who would have guessed?

Interjections.

Mr. Chairman: Yes, Mr. Philip.

Mr. Philip: Mr. Chairman, on a point of order: I thought that our understanding in scheduling these three days was that, because of the minister's schedule, we were trying to accommodate the minister so that she could at least be here for the clause-by-clause.

Mr. Chairman: That is correct.

Mr. Philip: She is not here. I think the message should be taken back fairly clearly by Mr. Kanter that we accept the fact that this morning she was in cabinet but that we expect her to be here for the rest of the clause-by-clause. A number of committees have refused to deal with important legislation, not small, insignificant or technical bills but important legislation, when the minister was not present to answer questions. I think that if the minister does not appear, then we may well be moving a motion not to deal with this legislation in the absence of the minister.

Mr. Chairman: Thank you, Mr. Philip. That is not a point of order, but it is information. Mr. Kanter, I am not going to prolong this. You have indicated that the minister indicated she would make herself available.

Mr. Kanter: For clause-by-clause consideration. If the members opposite are willing to undertake not to have more procedural motions, she will.

Mr. Farnan: A point of order.

Mr. Chairman: I have ruled it is not a point of order. If it is on that—

Mr. Farnan: Basically, all I want to suggest is that my colleague had said he had a meeting at 12:15. I was moving a motion of adjournment for 12:15.

Mr. Chairman: Until two o'clock.

Mr. Farnan: Until two o'clock.

Mr. Chairman: There has been a motion by Mr. Farnan. Let's try it now again. Those in favour of—

Interjection.

Mr. Chairman: It is not debatable, Mr. Cureatz. I am sorry.

Those in favour of adjournment? We are adjourned until two o'clock.

The committee recessed at 12:13 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Wednesday, October 5, 1988

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Collins, Shirley (Wentworth East L) for Mr. Keyes

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Farnan, Michael (Cambridge NDP) for Mr. Hampton

Roberts, Marietta L. D. (Elgin L) for Ms. Poole

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Smith, Hon. E. Joan, Solicitor General (London South L)

AFTERNOON SITTING

The committee resumed at 2:06 p.m. in committee room 2.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Chairman: I recognize a quorum. I am going to float this one by. Recognizing that at the outset when we were hearing deputations, in order to be careful of our time, we had unanimous consent that in terms of speaking on clauses or amendments we would have some framed fair time, I am wondering if the members would like to suggest a time and give unanimous consent to that time.

Mr. Philip: What are you talking about?

Mr. Chairman: In terms of dealing with the bill clause by clause.

Mr. Philip: No, that is closure.

Mr. Chairman: Then we must have been carrying out closure throughout the hearings with the deputations. All right, we do not have unanimous consent, so we will proceed.

Mr. Philip: There is a difference when you have a number of people who have to be heard in a day to allocate time. There is another difference when you have legislation to exercise closure. If you do not understand that difference, Mr. Chairman—

Mr. Chairman: Fine, Mr. Philip. I gather we do not have unanimous consent. Are we ready to proceed with the bill?

Mr. Philip: The minister is not here. I do not see any reason why we should proceed in the absence of the minister.

Mr. Kanter: If it is the understanding of the committee that we will be proceeding on a clause-by-clause basis with the bill, I will see if we can have the minister attend very, very quickly.

Mr. Chairman: It was my understanding, and I may be wrong, but in the original Hansard, I recall the minister indicating that for all purposes her parliamentary assistant spoke for her. I may be mistaken in that regard, but I believe that was the statement that was made. For that reason, why can we not start with the bill and—

Mr. Philip: Mr. Chairman, you are mistaken. The agreement was—and the opposition parties were most co-operative on this—that we recognized that the minister could not be present at all the hearings and, therefore, for purposes of the hearings, we accepted that the parliamentary assistant would travel with the committee rather than the minister. I think that is reasonable. You cannot tie up a minister for 10 weeks.

We at no time indicated that the minister should not be present to answer questions on the legislation, and I think it was understood that she would be here for the legislation. If we are going to do clause-by-clause, we should not proceed without the minister present to answer the questions.

Mr. Chairman: I understand what you are saying, Mr. Philip. Then can I assume that we are going to proceed with the legislation and, if so, perhaps the minister could be advised to be here as soon as possible?

Mr. Philip: You have an agenda.

Mr. Chairman: Do I gather from what you are saying that we are ready to proceed with the clause-by-clause?

Mr. Philip: What else are we going to do?

Mr. Chairman: I do not know. I am just asking. I do not have any papers before me. Then I assume that we have unanimous consent to proceed with the clause-by-clause upon the minister's arrival. If so, we will perhaps recess until she arrives. Is there unanimous consent on that?

Mr. Kanter: Just before we consider that motion, we have submitted some government amendments, and I have instructed the clerk to distribute those to the other parties as soon as she receives amendments from the other parties. I think it might be an appropriate time to consider the amendments of all parties. I would just ask, through you, if the other parties intend to submit amendments and if they have been submitted to the clerk, that they might be distributed at this time.

Mr. Chairman: All right, before we recess to await the minister, Mr. Philip and Mrs. Cunningham, are you prepared to swap amendments and let us all see where we are going and what we are doing?

Mrs. Cunningham: I have to be honest with you. We are not quite ready to give you a whole package right now.

Mr. Chairman: You can give us what you have, I guess, and I am sure that there may even be amendments along the line.

Mrs. Cunningham: Okay, could we do that when my colleagues arrive? That is what they are doing right now, working on getting them ready.

Mr. Chairman: Are you content with that, Mr. Kanter?

Mr. Kanter: Certainly. I am just indicating our willingness to share our amendments when the others are available.

Mr. Chairman: Perhaps the clerk could be the vehicle—I hate to refer to you as a vehicle, Debbie. They could be placed in her hands as soon as they are available.

Mr. Philip: I have some problems with that for the simple reason that it is fairly obvious that I not only have amendments but also have backup amendments. If one thing is not acceptable, then I will move something else. By tabling all my amendments, in fact, I am tabling my strategy and my backup positions, and I am not prepared to do that.

Mr. Chairman: None of you has complied with the rule that the amendments should be filed two hours before the meeting.

Mr. Kanter: We were close.

Mr. Chairman: But one would expect that rule was put there for the purpose of allowing the committee to see the amendments.

Mr. Philip: I am sorry. That is not the ruling. If you would check the standing orders, it says that it is where possible.

Mr. Chairman: It says, "When time permits," Mr. Philip.

Mr. Kanter: Could you read rule 64 in its entirety, Mr. Chairman?

Mr. Chairman: Rule 64 says, "When time permits, amendments to be proposed to be moved to bills in any committee shall be filed with the Clerk of the House"—I underline "shall"—"at least two hours before the bill is to be considered, and copies of such proposed amendments shall be distributed to all parties."

I understand what you are saying, Mr. Philip, but it seems to me that the exercise here is to have it all out on the table so that we can consider it. I realize that may interfere with the strategy of the opposition, and it is obviously its prerogative to take steps to improve the bill, but I do not see that 64 is in any way limiting. It is mandatory. I have not brought it to anybody's attention, because no one has filed the amendments within the two hours, but I would say there is really no reason for them not to be filed at this point in their entirety.

Mr. Philip: The key words are "when time permits." In fact, if I cannot get one amendment accepted, then I have to introduce an alternative amendment. Therefore, in a situation like that, time would not permit for me to table that amendment. It is fairly clear, not that I expect any of my amendments to pass, because the government has clearly indicated it is going to railroad through what it wants without listening. They have not listened to the public of Ontario and they are not going to listen to me.

Notwithstanding that, I am sure you can appreciate that I at least have the option of having backup amendments. I have no intention of sharing that until I find out whether by some miracle the government members might actually listen to a member of the opposition and actually accept some reasonable changes in this bill.

Mr. Chairman: Are there any amendments that the NDP is prepared to provide to us at this time?

Mr. Philip: I would have to consult with my colleague, because he has some amendments and I have amendments.

Ms. Hart: I did not quite catch that last answer, but I have sat on a lot of committees. I can think of one where Evelyn Gigantes put in many amendments to Bill 7, both her initial barrage and her backup amendments, without any difficulty at all and found no problem at all arguing her position. Obviously, you are in a position as an advocate. People understand that, but what I was going to suggest was that if your ruling is that there has to be something filed, surely we can get the first barrage from Mr. Philip so we have something to work on.

Mr. Chairman: That is what I am asking. Are there any amendments the NDP is willing to provide at this time?

Mr. Chiarelli: Was that a question?

Mr. Chairman: That was a question.

Mr. Farnan: I have one amendment that is still being worked on.

Mr. Chairman: I think that fits in "when time permits," but if there are any that are here now, is the NDP prepared to file any of them?

Mr. Philip: I will if you give me some time, on the assumption that is also the position of all three parties, not just the Liberals.

Mr. Chairman: The government has indicated it will, and Mrs. Cunningham said she wants to speak to Mr. Cureatz because he is still doing them. Just to go back to clear the air, because we have sent for the minister, I gather that we have unanimous consent that we will proceed with the bill when the minister arrives. Is that correct? Do I have unanimous consent?

Mr. Kanter: I think the matter of the exchange of amendments is also on the floor. My understanding is there is also maybe an agreement, rather than a motion, that all parties will endeavour to provide the clerk with amendments when available. We have in fact done that. My understanding is that the other parties have agreed to do that as well.

Mr. Chairman: Mr. Philip's indication is that he is not prepared to provide the backup amendments.

Mr. Kanter: Some of them.

Mr. Chairman: But he is going to provide some as soon as he has time, to allow us to go ahead.

I would like to go back to the other issue, Mr. Kanter, if I could. We have sent for the minister. Do we have unanimous consent that when she arrives here, we will start with clause-by-clause?

Mr. Kanter: No. I would like to have an idea of when the opposition parties expect to have some material before us so that we can—

Mr. Chairman: I am expecting that the amendments will be tabled with the clerk before we start into clause-by-clause.

Mr. Kanter: If that is your understanding, that is fine.

Mr. Chairman: Is that a fair understanding? Do we have unanimous agreement that that is the case?

Mr. Philip: Will you give me a few minutes to take my backup amendments out of this initial package?

Mr. Chairman: All right. I had suggested that we were going to adjourn until the minister is here, but I still want to get an answer to the question. Do we have unanimous consent?

Mr. Kanter: Mr. Chairman, I think there are two questions. I think the motion might be expanded to suggest that we will resume with the minister's presence when some amendments from each party are in the hands of the clerk. Those two matters go hand in hand.

Mr. Chairman: All I am interested in ensuring is that we have sent for the minister, and if the minister arrives here, that we proceed with the bill and not get into other things. That is what I am looking for unanimous consent for.

Mr. Kanter: When some amendments are provided.

Mrs. Cunningham: I do not have any problems with proceeding if you are going with the first clause, the second, that kind of thing. I do have a bit of problem, strategically, in placing some amendments. There is a strategy involved for us around amendments. Are you taking people in a certain order? How does it work?

Mr. Chairman: We go clause-by-clause first, then we do the schedules, then we do the title and the preamble.

Mrs. Cunningham: Who puts the amendment down first?

Mr. Chairman: Whoever catches my eye first.

Mrs. Cunningham: Oh, the same catch-your-eye thing.

Mr. Chairman: If we reach the second clause and you raise your hand because you have an amendment or Mr. Philip does, whoever I recognize first puts his or her amendment in.

Mrs. Cunningham: Okay.

Mr. Chairman: There can then be an amendment to the amendment and there can be an amendment to that. Then we vote on them.

Mr. Philip: Miss Roberts might want to comment on this, but surely the procedures of the House are that you recognize the official opposition first, followed by the third party and followed by the government party.

Mr. Chairman: It is my understanding, Mr. Philip, that it is a question of who raises his or her hand and who I recognize first.

Mr. Philip: May I have a ruling from the Deputy Speaker?

Miss Roberts: No. I have no authority in this committee.

Mr. Philip: Can she at least shed light on what the procedure of the House is?

Mr. Chairman: Just hang on a second. I know that the chairman's book is not an official document but, in fact, that is—just give me a second. If necessary, we will find it in the actual standing orders.

Mr. Philip: Do not worry. In another three years, I will make you deputy minister.

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Mr. Chairman: All right. According to this, on page 11, it says that the chairman puts the question: "Are there any comments, questions or amendments to this bill and, if so, to which clause?"

It continues: "When members call out the numbers of the clauses with which they wish to deal, the chairman will endeavour to catch the lowest number (for example, clause 5) and put the question, 'Is there anything before clause 5?' If not, the chair will put the question, 'Shall clauses 1 to 4 inclusive stand part of the bill?', and proceed with the consideration of clause 5 and so on through the bill....Amendments may be made in every part of the bill."

Mr. Philip: What about the section of the standing orders that says the committee shall be run essentially in the same manner as the manner of the House?

Mr. Chairman: I am sure I saw that somewhere.

I am advised by the clerk, who has checked, that if there are two amendments to the bill, then you recognize the person who introduced the first amendment first and so on. For instance, if you introduced an amendment and Mr. Philip introduced an amendment similar to or along the lines of that amendment, you would get to speak first. But just to clarify matters, I have no difficulty with whatever way we proceed.

Mr. Chiarelli: Just put a patch over your left eye.

Mr. Chairman: I have no difficulty with whatever way we proceed, but perhaps we could set some ground rules so nobody feels ill done by.

Mr. Philip: I move an amendment to subsection 4(1) of the bill.

Miss Roberts: Mr. Chairman, if I might speak briefly, we are waiting for the various amendments to come. Mr. Philip very kindly has submitted his, and I am sure the third party is going to be submitting a few with respect to that. Perhaps we should have a brief recess until they have an opportunity to determine just exactly how long it will be. Then you are going to have a situation where we should all have copies and know how many amendments there are to certain ones. We should be able to proceed from there and set up a workable plan.

Mr. Chairman: Okay, a motion for adjournment is nondebatable. Do you want to put a time on that?

Miss Roberts: Make it 15 minutes.

Mr. Chairman: Let's put it till a quarter till three. Those in favour? All right. We are recessed till then, adjourned till a quarter to three.

The committee recessed at 2:25 p.m.

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Mr. Chairman: We will resume. The amendments are being placed before you, at least the ones that are available. Are there any comments, questions or amendments to this bill, and if so, to which clause? I would ask you to shout out your clause.

Mr. Philip: Let's take our time with this. I have a question. Normally, it is the responsibility of the government to spell out the principle of the bill and I would ask the minister if she would like to define what the principle of this bill is.

Hon. Mrs. Smith: They are amendments to a bill.

Mr. Philip: What is the purpose of this bill?

Hon. Mrs. Smith: To amend the existing bill.

Mr. Philip: What is the purpose of the existing bill?

Hon. Mrs. Smith: You can read the purposes.

Mr. Philip: No. You are the minister. I am asking you what the principle of the bill is.

Hon. Mrs. Smith: I do not have it here in front of me. I am not being facetious.

Mr. Philip: I am asking you what the principle of the bill is. It is normal for the minister to spell out the principle of the bill.

Mr. Kanter: On a point of order, Mr. Chairman: The committee agreed to consider the amendments in a clause-by-clause fashion and I think you have suggested we proceed in the proper manner. If members of various parties want to indicate clauses they have an interest in, I will indicate that the government has an interest in clause 3(2)(c); other parties may have an interest in other clauses preceding that. I think that is the way we should proceed at this point.

Mr. Philip: I have an interest in section 1. It is normal for the government, in section 1, to spell out the principle of a bill. There is no spelling out of the principle of the bill and I ask the minister, what is the principle of this bill?

Hon. Mrs. Smith: I prefer to deal with section 1 and the amendments in front of us. If you want me to deal with that at some other time, I will be prepared to do so.

Mr. Philip: We are not dealing with section 1 at some other time. We are dealing with section 1 now.

Hon. Mrs. Smith: Section 1 is definitions.

Mr. Philip: Under section 1 of a bill it is normal to spell out, in the first section of a bill, the principle of the bill and I am asking the minister what the principle of the bill is.

Hon. Mrs. Smith: Could the chairman please ask the member to submit the amendment.

Mr. Chairman: Are there any amendments on section 1?

Mrs. Cunningham: We put one forward.

Hon. Mrs. Smith: This one here. It was just handed out.

Mrs. Cunningham: Do you have one on section 1?

Mr. Chairman: It is at the bottom of the package. We are dealing with the definition of "municipality."

Can we deal with clause 1(aa), since there are no amendments to clause 1(a).

Ms. Hart: On a point of order, Mr. Chairman: Very often in dealing with bills and amendments to bills, the definition section is stood down to be dealt with at the end, because before you have been through all of the sections and amendments, you do not know what terms there are to be defined.

It seems to me that Mrs. Cunningham's motion raises that very problem, so maybe we should be considering standing it down to the end.

Mr. Chairman: I was actually asking about subclauses 1(a)(i) through (x). You are raising the same point on that, I gather. If we have unanimous consent, we can do that.

Mr. Philip: I think it makes some sense. It may well be that some members may wish to add extra definitions after the bill. I think Ms. Hart makes a lot of sense.

Mr. Chairman: You understand, Mrs. Cunningham, why we are doing that? Any amendments that may take place down the line may in fact change the definitions. Once we have passed it, we have passed it and we cannot go back and change it. Do we have unanimous consent, then, that the definitions be deferred?

Mrs. Cunningham: Can I ask a question on that point? Are you then saying wherever it says "'municipality' means," that would be an example of a definition and you are going to leave it?

Mr. Chairman: We are going to leave it to see if the complexion of that needs to be changed to suit any amendments that are made in the substance of the bill, so we are standing down section 1.

Mrs. Cunningham: All of section 1 then? We can come back to section 1.

Mr. Chairman: That is right, as well as your amendment, by unanimous consent.

Mrs. Cunningham: Now, my next question.

Mr. Chairman: First of all, can I inquire if we have unanimous consent that we stand that down?

Hon. Mrs. Smith: Could I ask a question before we stand it down, just for clarification for a later time, as to the intent of this. I do not mean to raise it now. I would just like the member to clarify this so that people will have a better understanding. Maybe that would get into consideration and it would be better if it were stood down too.

Mrs. Cunningham: That was going to be my point, because I have some information that I think the committee should be considering with regard to this. I did not put it in lightly and I am not absolutely thrilled with all the wording, but the reason we put it in at all is because we think we have a bigger problem in the definition. Are you saying that I should save my backup information and my other definitions that impact on that one until the very end?

Mr. Chairman: Okay.

Mrs. Cunningham: I do not want to be rushed at the end, though, and I want everyone to consider it carefully.

Mr. Chairman: Until either the very end or until we have got past all of the definition items that might be affected by a change.

Mrs. Cunningham: As long as I can be assured that people will take

the notes I have put together on this seriously, because I think we have a bit of a problem with that particular clause.

Mr. Chairman: All right.

Mrs. Cunningham: If you do not want me to table my reasons now, that is fine. We will wait and do it later on.

Mr. Chairman: All right. Do we have unanimous consent that we stand down section 1 plus the amendment proposed by Mrs. Cunningham?

Agreed to.

Section 2 agreed to.

Section 3:

Mr. Chairman: There is an amendment from the government. Mr. Kanter, would you like to read that amendment and speak to it.

Mr. Kanter: I am in some difficulty here from a procedural point of view, because I understood the Conservatives might have an amendment to that section.

Mrs. Cunningham: We do and we are not quite ready.

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Mr. Chairman: The government motion is before us first. Perhaps you can speak to the motion or we can pass over it and stand it down.

Mr. Kanter: I think we should stand it down until we see the opposition motion on the same clause.

Mr. Chairman: Do we have unanimous consent that we stand down that item?

Mr. Philip: Can we just find out what is in the opposition motion? It is not a very complicated motion to draft. If she is coming in at 10,000 square feet rather than 7,500, then we may want to see whether we have consensus. I think what we agreed on was that it should be more than 5,000. The question we will be dealing with is whether it should be 7,500 or 10,000. That is the only issue I can see that we could deal with.

Mrs. Cunningham: We are putting together some arguments for our position we will be putting forth. I do not want to table the amendment until I have that down. It is just a matter of simply not being ready right now.

Mr. Chairman: Do we have unanimous consent to stand down subsection 3(1) of the bill on clause 3(2)(c) of the act? I am going to assume I have unanimous consent unless I hear somebody shout out that he is not consenting.

Section 4:

Mr. Chairman: There is an amendment by the government.

Mr. Kanter: If I might speak to what I guess would be the second government amendment, this amendment would add a notice and public meeting

provision to the bill before passing a bylaw to either open or close facilities, premises, retail businesses on a municipal basis. This is a motion many presenters spoke to. Retail groups, the Association of Municipalities of Ontario, a number of groups that were concerned about the bill felt it was important there be an opportunity to speak to and be heard to the bill. This would give people the opportunity to be heard. I think this is quite a substantial addition to the procedure now found in the Retail Business Holidays Act.

Mr. Philip: I have an amendment to subsection 4(1). The government motion is on subsection 4(4), and therefore it is more appropriate to deal with subsection 4(1).

Mr. Chairman: Perhaps you would like to deal with your amendment first, then.

Mr. Philip moves that subsection 4(1) of the act, as set out in section 4 of the bill, be struck out and the following substituted therefor:

"(1) Despite section 2, the council of a municipality may by bylaw permit retail business establishments to be open on any holiday,

"(a) if, in the opinion of the council, it is essential for the maintenance or development of a tourist industry or cultural industry in the municipality; or

"(b) if the establishments provide essential services to the municipality."

Mr. Philip: I will deal with this motion first. The companion motion also is interesting.

In speaking to my amendment, as we went around the province, we were told over and over again by mayors and by different councillors that in fact this minister had not consulted them on the tourist exemption. Appearing before this committee, the minister said that she had consulted AMO and that it had refused co-operation. In fact, we have evidence to the contrary.

We have tried to have a meeting with the minister to clarify this disparity in testimony between what the minister said was true and what AMO said was true. Both opposition parties even offered to hold early meetings so that we would not interfere with those who wished to make presentations, and the government used its majority on the committee to thwart that.

What the municipalities are saying over and over again is, "We do not know if there are problems with the tourist exemption." The minister says there are. We have asked her on several occasions to give us a listing of which municipalities are using the tourist exemption. She did not do even a listing until she introduced the legislation, and furthermore she has still not pointed out to either us or to anyone else which municipalities are offending, which municipalities are committing the great sins she says are responsible for needing this kind of legislation.

The purpose of my amendment is to go back to the tourist exemption and to say that municipalities do have the right to enact tourist exemptions. Indeed, it is in keeping with AMO's letter, which it sent to all municipalities, indicating "the association's willingness and desire to review

the present legislation for the purpose of correcting what the government has described as inadequacies and unfairness with the application of current legislation."

They point out in their letter to all of the municipalities that "this offer was rejected and the government proceeded with the introduction of the bills on May 25." AMO also said that it was asking the standing committee to support, as did the select committee on retail store hours, the principle of a common pause day. This preserves the principle of a common pause day, while allowing the flexibility of dealing with the tourist exemption.

This amendment is clearly in keeping with AMO's request. The minister has not consulted with these municipalities. It is possible to pass this amendment to give them back the power that they had and for the minister to meet with them and work out any of the administrative problems that she sees exist. She still has not told us with which municipalities there are problems. She has not decided to share that with the committee, the public or the municipalities.

To throw out something which a majority of municipalities came before us and said was working, without the minister demonstrating that it is not working, or if it is not working in part, which parts or where the offenders are, is simply to throw out the baby with the bathwater. There is an old adage, "If it isn't broken, don't fix it." If it is broken in part, you do not replace the whole thing.

My amendment clearly allows those municipalities the right to designate tourist areas and gives the minister some opportunity to meet with the municipalities, which she has not done, and to take up the offer they have made on no less than three occasions to redefine or, if necessary, change the administrative procedures for making the tourist exemption work. It is an amendment that says: "Madam Minister, you haven't done your homework. Get back to doing what you should have done in the first place." I look forward to hearing comments from all members of the committee on this amendment.

Mr. Chairman: Do any other members wish to address Mr. Philip's amendment?

Mr. Philip: I would like an opportunity for the minister to respond.

Mr. Chairman: I am going to find out if there are any members who wish to do first.

Mrs. Cunningham: Eventually, I will.

Mr. Chairman: Would you like to comment on it now?

Mrs. Cunningham: I would like a response from the minister.

Mr. Chairman: Is that the wish of the members of the committee? All right, Minister.

Hon. Mrs. Smith: I do not wish to be boring and prolong things, but I have heard sufficiently often, indirectly, that I have not consulted with AMO, which is the representative of the municipalities and through which I have contacted the municipalities. I will get copies of these and submit them

so that you fully understand the communication that carried on and the seeming satisfaction or lack of complaints from the association of municipalities throughout.

As I said in the first place, I did meet with the AMO president, who attended on the day of the introduction of the bill, assured her of my interest in hearing from AMO at each and every stage. I do not have a formal record of it, but we did then have a meeting in the office of the Minister of Municipal Affairs (Mr. Eakins). We had a very interesting conversation. We said we were interested in any views they had on how to make our bill work, etc.

She took the position then, which became an official position throughout, as you will see, that as long as the local option was there, they did not think it was worth discussing, that the local option was their point of contention and had to be removed. Basically, I believe we recall her as having said she was not interested in whether to scramble, boil or fry the eggs, she did not want any eggs at all. This was her comment, the sense of where she was at. I considered it a legitimate position for her to take if she so chose. That was the first meeting we had with her.

Interjection.

Hon. Mrs. Smith: No, I believe I have the floor, Mr. Chairman.

Mr. Chairman: Yes, you do.

Hon. Mrs. Smith: I believe this has been discussed on many occasions in my absence, I would now like to read this into the record.

1510

The next occasion was December 22. A letter from Mrs. Brick to John Eakins, which sets out the meetings they are going to have, says: "With respect to the agenda for the meeting of February 18, the Association of Municipalities of Ontario would like your consideration of inviting the Honourable Joan Smith, Solicitor General, to discuss the Retail Business Holidays Act public option as one possible agenda item. The Solicitor General has forwarded a preliminary list of examples for the association's comments and this matter will be discussed with the AMO board of directors at its January meeting. Therefore, it would be timely for her to come on the 18th."

Next: "Thank you for your letter of December 21"—this is from Doris Brick—"I wish to advise that the question of Sunday shopping and the above report will be considered at the AMO executive meeting of January 15. The executive committee will report January 28." Then, of course, I was invited on February 18. The agenda was theirs at all times and I attended as requested.

On January 12, there is a letter from John Eakins to Mrs. Brick as the president and, therefore, setting out the problem as he saw it. I will read you an excerpt. This is in his capacity as Minister of Municipal Affairs, but also I would point out to the members that he had some sense of tourism because he had just previously been Minister of Tourism.

He says in his letter: "In my view, it is not possible to define tourism today. There is not one part of the province that does not have a potential for tourism. All 12 tourist regions are eligible for funding under

the Ontario Travel Association's program. In fact, I would challenge anyone to tell me that any particular municipality does not have some tourism potential. As well, in discussing these options, I would appreciate receiving AMO's comments on whether regulations should be at the area of municipal or regional-municipal levels and on the various constraints outlined in the discussion paper which other provinces have placed on the exercise of municipal regulatory authority. I look forward to our discussions following your board of directors' meeting."

Mr. Philip: What is the date on that?

Hon. Mrs. Smith: The date on that is January 12.

Mr. Philip: In 1988?

Hon. Mrs. Smith: Yes, 1988. The bill was introduced in December 1987, so it is obviously after that.

Nest is a provincial-municipal consultation meeting of February 18. "The Ministry of the Solicitor General is considering what to do with existing legislation. We will be carrying out discussion of possible alternatives. The Honourable Joan Smith pointed out that municipalities already have the local option of declaring tourist areas. The association indicated that it is not prepared to accept the concept of a local option, nor is it prepared to discuss ways of implementing something which the municipalities do not want. If the province is prepared to set aside its decision to make it a local option, the association is prepared to discuss Sunday shopping."

Further on: "The Honourable Joan Smith commented that there has been an enforcement problem of Sunday closing for police for years. She stated that she could not give AMO a definitive answer about the province's intent as there are areas that are still undecided. She informed the association that there has been consultation since the day of the announcement."

We go on to a letter to Doris Brick from myself on March 28, 1988, from which I excerpt: "As you know, no new legislation has been introduced yet, and we are currently consulting with a number of groups concerned with the issues in order to arrive at the best means of implementing our decision. I remain open to discussing this issue with your association should you so desire."

I would point out that she had previously said they did not wish to discuss it with us, unless we had withdrawn the local option. On receiving it, I reopened our invitation to discuss it.

Then we go on to the meeting in Perth, where a presentation was made by Mr. Moscoe: "AMO reiterated their position on Sunday shopping. Municipalities are not prepared to discuss or consider the local option. This responsibility should rest with the provincial government. The association would be prepared to assist the provincial government with the development of provincial legislation if and without the local option. The Premier responded that the decision to make Sunday shopping a local option has already been made. He respects local autonomy and considers municipalities the most appropriate level to make decisions regarding this issue. The details of the legislation remain to be discussed, and the Premier urged AMO to input into such discussions."

We go on, also relative to the Perth meeting, which was on March 30: "It was pointed out that no new legislation has been introduced as yet. However, we are currently consulting with a number of groups regarding this important subject. Please be assured that the views of AMO will receive our careful consideration."

We go on then to April and a letter from Doris Brick:

"Dear Premier:

"The Association of Municipalities of Ontario would like to thank you for forwarding so quickly to the association the information kit on the Retail Business Holidays Act and the Employment Standards Act. On April 14, 1988, after a preliminary review of the proposals which will make Sunday store hours a local option, the association issued a press release to its members urging them to make representation to the committee of the Legislature. AMO would appreciate receiving as soon as possible the committee's hearing schedules in the interest of ensuring full public debate on this important social issue. The Association of Municipalities of Ontario would like to provide this information to its municipal members.

"The association also requests that the public debate on this issue not be confined to the Legislature. AMO urges that the government hold public meetings across the province to enable all to express their views on the draft legislation."

The draft, which was sent out by AMO to the municipal governments, was: "The Ontario government has introduced legislation to amend the current act regarding retail business openings. The Association of Municipalities of Ontario is against local discretion for Sunday store openings. AMO is opposed to this government decision as being, in fact, an abrogation of provincial responsibility. Sunday store openings will have a broad socioeconomic and employment impact," etc.. "The province should therefore establish uniform (inaudible). That is her position, obviously.

"The amendments...will go to a committee of the provincial Legislature for review. AMO urges its member municipalities to make representation to the committee of the Legislature and voice their concerns with the draft legislation. The association has also requested the Premier and the Solicitor General to schedule hearings across the province on this important social issue, to permit full discussion of the enforceability of the new draft legislation. The association will shortly forward to all municipalities in Ontario the schedule of meetings for the committee of the provincial Legislature. However, AMO urges you to also forward requests to the government urging public hearings across the province."

I point out that all these things were done. This was AMO's request, that the hearings be held. The information was provided, the times of meetings were provided, everything AMO requested. When we asked for consultation, this is what they requested and this is precisely and exactly what was done, as they requested.

I go on to a letter from David Peterson, "Thank you for your letter of April 15 concerning committee hearings." She was grateful for receiving everything on time and told him what her response was: "I have forwarded a copy of your letter to reply to the Honourable John Eakins. It was expressly arranged for you to be notified as soon as the schedule of committee hearings

has been determined. Thank you for letting me know your views on the needs for public debate. They will be seriously considered in our discussion on the nature of the hearings to be conducted on this issue."

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Next, I have on May 2 a letter from John Eakins: "Thank you for your letter of April 15 in which you request early notification of the schedule which will be conducted. I will be glad to arrange for you to receive such notice as soon as the schedule has been set. I have enclosed a copy of Bill 113 for your information and have arranged for copies of the bill to be forwarded to all Ontario municipalities. I have also written to all municipalities to provide them with the information kit.

"I agree that this important social issue deserves the fullest possible public participation in the legislative process and that all our interests are served by a widespread awareness of the content of the proposed legislation. I believe that many of the municipal concerns about the issue have been addressed in these proposed amendments of the Retail Business Holidays Act."

On June 13, I have a letter I sent to Mrs. Brick:

"Dear Mrs. Brick,

"Thank you for your letter of April 15 regarding the government's intention to amend the current law respecting retail business openings and requesting that public hearings be held across the province. While the government fully supports the holding of public hearings on this issue, the committee of the Legislature decides where those meetings will be held. I will be pleased to forward your request as soon as the matter is referred to committee and to provide you with a copy of the committee's hearing schedule when it becomes available.

"Once again, thank you for your continued interest."

Somewhere available we also had the minutes of the meeting which I did attend on February 18. As you can see, following through the full correspondence, we complied with every request from AMO. We continually asked them for their input. This was their input. We respected the requests. All those things and obligations have been met. Mr. Eakins said at the beginning of all this that he could not see how anyone could define any municipality as not having a tourist potential. They have had since January 18 to address this issue and have chosen not to do so or have not done so. I see no need after this continuous request for input to assume that there is some sudden change that input is now available. Also, if AMO themselves have any work that they wish to do, as will come up in later portions of this bill, we would co-operate fully with them in setting out their own such regulations.

Mr. Chairman: Minister, I have allowed you to give that explanation because Mr. Philip opened that up in his statement on the amendment, but perhaps you would like to comment on the motion by Mr. Philip.

Mr. Philip: May I ask a question arising out of the minister's answer to my question?

Mr. Chairman: We will get to you Mr. Philip. I want to conclude with the comments because Mrs. Cunningham is next, then Mr. Farnan and then yourself. Do you have any comments on the amendment, Minister?

Hon. Mrs. Smith: The amendment says, "...the council of a municipality may by bylaw permit retail business establishments to be open on any holiday, if in the opinion of a council it is essential..." Mr. Philip is wishing to limit the powers of municipalities here to just having the one. I am assuming, and I am wanting to check with the member, that his intent is to limit the powers of the municipality only to have the power to open under those circumstances. There are municipalities who presently open under quite different circumstances. I would not propose to limit the powers of those municipalities to have other reasons, nor has AMO suggested that we should do so. They presently use other criteria as well as tourism and culture.

It is not our intent, although municipalities are free, as you know from the reading of the bill, to so limit their own extensions of Sunday openings to these matters. That is in their hands.

Mr. Philip: These are the criteria AMO suggested, so I do not know where you consider them to—

Mr. Chairman: Mr. Philip, we have an order here. Mrs. Cunningham, you are next.

Mrs. Cunningham: It is difficult to speak just specifically to the comments on the amendment without referring to the comments by the Solicitor General today; so I will have to do that.

I think the points that were made, and I do not think they were made in the response by the Solicitor General to the amendment before us, were that AMO in particular—and I think the Solicitor General was keeping her comments directed at AMO, in all fairness—has had ample time in fact to respond to the bill, and especially to the request for a definition of tourism. I would like to be corrected if I am wrong—I think that was the intent of the Solicitor General's statement—before I go any further. Is that correct? Is that what you were saying?

Hon. Mrs. Smith: The bill does not just address tourism. I pointed out that tourism is constantly raised by certain people and that in the course of this that, right from the beginning, the Minister of Municipal Affairs (Mr. Eakins) has questioned that as a definable item. But the bill deals, as you are well aware, with other than just tourist industries.

Mrs. Cunningham: No, but I was trying to get the gist of your comments as they related to subsection 4(1), because that is all I want to speak to at this time.

Hon. Mrs. Smith: That is fine. If that is what we are speaking to, that is what we are speaking to, and I agree with that. Howsoever, in making his supposition the member who submitted this did refer, as he has constantly throughout the summer, to the fact that I did not consult with AMO and since that was part of his presentation of this, I felt entitled to respond.

Mrs. Cunningham: So really what you were responding to there was the consultation process?

Hon. Mrs. Smith: I was responding to the member, yes.

Mrs. Cunningham: Okay. I just want to make sure I am speaking to the right thing then and speaking to your comments as well, Madam Minister. I am now trying to speak as a member of a committee who has had the privilege of

being part of some 21 of 24 days of public hearings and who has listened to almost 270 presentations from individuals and from groups that have been very much opposed to this legislation.

In particular, since we are on the specific section 4 of the bill, where we are looking at the municipal power, I should tell you that of the 269 presentations, some 217—I am excluding any questions to drugstores in my little survey because I did not think it was a fair question for them—have suggested that they do not want this responsibility at the municipal level.

My comments then to the Solicitor General at this point in time are: I came on this committee in August. I am not really aware of the former correspondence except by way of listening both on August 3 and today and I really do not care what happened before these hearings took place. That is not why I am here. I do not care what the correspondence meant. I am not particularly concerned with what was stated at that time. What I am really concerned about is this democratic, public process that we have all been part of and the information that we have in fact gleaned and gained from a lot of very articulate individuals and groups that have made submissions.

Regardless of what the government is saying, they do not like the municipal option. I asked the question specifically. I further asked the question, would they be interested in assisting us with criteria and/or a process for tourism, because I think it is complicated. I have to take extreme objection right now to the singular comments, although I hope the Solicitor General will respond in some way to my statement.

AMO, in my opinion, is just one group. They represent all the municipalities in Ontario. We know what the vote was with regard to this legislation. I would agree that the Solicitor General did invite individual municipalities to come before this committee, as they did on a daily basis, sometimes one, sometimes two, sometimes three. Not one of those municipalities was in favour of this particular section of the bill, of the proposed legislation.

Now I have to say, if the public process means anything, we should be at least going back to the 213 individuals and groups, many of whom were municipal councils, that have said to us: "Look, we would be most happy to assist you in the definition of tourism, since this seems to be such a tremendous problem for this government. We would be most happy to assist you in some process for making all of this work, if it is going to be handled at the municipal level with some framework, and the framework is tourism."

1530

I am very happy to see that my colleagues have tabled as part of their amendment the cultural industry as well, and that is as a result of the hearings when we heard that to be a very important aspect. If there was any confusion at all, it was on the one that in fact the government kept throwing back to us: What would you do with Chinatown? I think we have really listened and tried to come forth with some amendments that members of the public have brought to our attention as being workable for them.

That is my first point. I am not interested in just AMO and I am not interested in history, because I started my work in this public process on August 2 and I think at least the indication of who is ready to assist us with this definition is very obvious. Perhaps the government members would say: "Why have they not done so?" In fact, I would expect them to say that. I will

tell you why they have not. It is because on August 3 or August 4 the Solicitor General said that the local option is not negotiable.

Now this is hours and hours of work. I know, because I have had a couple of staff members working on it this summer. I have, I hope, given it considerable time and energy. I had a definition that I thought we could at least look at as a starting point. I was ready to bring that to the committee last week, but I needed to know that the committee and the government were serious about doing that work, and they were not. They voted the motion down. We had the letter prepared. We knew who we were going after. We had sort of a framework definition, meaning certain criteria and a process in place. We will be tabling the process after subsection 4(1) has been debated.

I guess now I am on to two points. First of all, the history lesson of what it was going to do and did not do is probably important to this government because you can hang your hat on history; but the most important part is we had this offer of assistance. We showed you how you could do it last week, and you did not want to do it last week. We understand by that you are not interested for the input. Therefore, my colleague has placed this motion saying, "All right, maybe we just have to bite the bullet," and I will tell you why. It is because on the very first day of hearings the Solicitor General stated that this law is not enforceable, and in fact stated: "We have simply been advised legally that we cannot come up with a definition that is tight enough to be of any meaning in the court and that in effect would serve a province with as many diverse types of neighbourhoods as we have in Ontario."

I do not know whether the government is waiting to surprise me. If it is, I would be most happy to be surprised. Again, I have had, I think, very well educated staff members, legally minded, working on trying to find out where this present legislation has not been upheld in the court. I took the Solicitor General at her word. I have had to speak to this. I have been waiting. I have been trying to play it down. I have not found one singular instance where the legislation, with regard to the definition of tourism and the criteria used by the municipality, which was the most important part, has not been upheld in the court. I stand to be corrected. I am waiting for the surprise.

Hon. Mrs. Smith: This paper here is it.

Mrs. Cunningham: That is fine. I asked on day one. I am more than aware of a letter that was sent to the Solicitor General on August 26 asking for the written legal opinion of the Ontario government solicitors that supports the statement that the current Retail Business Holidays Act is unenforceable and indefensible in court. That was sent to the Solicitor General after the hearings in London by the mayor of the city of London. I am sure others have asked the same question throughout the presentations.

I would be pleasantly surprised, and, if that is something that the government has, I would need to see that and consider it now before I go on with the last two parts of this argument because that will affect my argument.

Hon. Mrs. Smith: Mr. Chairman, the member knows, as I have said, I had been advised—there is no legal document. As we are discussing things now, things have been discussed. To get to the essence of what stood before the court and what we understand, I would be glad to answer, but first I want to respond to the member on two other points. I am sorry she was not in the House before August 4. I am sorry that her history started then.

Mr. Cureatz: Are you sorry she got elected?

Hon. Mrs. Smith: No, I am not at all. Mrs. Cunningham and I have worked together for years, and we enjoy each other's company. We do not get into personal comments. Howsoever, she did get in last August and has done a very admirable job for the Conservative Party since that time. I know that she would not expect us to start back at square one after the Welland-Thorold by-election, and whoever comes in then will have to live with history as it stands at that point also. So we must move on.

The principle of the bill as presented in the House, as was recognized by AMO and all the correspondence I have read into the record, was the local option. Tourism was a discussion along with that because it came out of the old bill and had been greatly discussed in the select committee, but in the presentation of this bill, the emphasis was on local option. We would point out to you that not in every instance of local option by any means is tourism the criterion, so it is local option that is under discussion, not simply tourism. Local option is what this bill is all about. It is the principle of the bill. First reading establishes the principle. The bill is then sent out for review and improvement and correction. The principle is established in first reading.

It is interesting that we have mentioned Chinatown, because I have driven through there on a couple of Sundays. I do not know in my mind whether in reviewing Chinatown, the municipality of Toronto would say it was done as a tourist exemption or as a service to the Chinese people in this community. That is something only they can decide. As I happen to drive through Chinatown, I am taken with the fact that most of the people shopping in Chinatown are of the Chinese community rather than tourists. It may have been passed under a tourist exemption, but only Toronto can speak to that; I cannot. That is what I mean by local option. Only Toronto can judge for what reason or to what purpose it wants to have Chinatown open. So much for the tourism.

With regard to court opinion, we have said from the beginning that the local option was already operative, that municipalities only needed to declare something a tourist option and it would, in fact, be in effect. We have produced the examples to show you how many municipalities, 119 or some such, had already done so. You criticized us for not having that sooner. I want to point out to you how much it was a local option. They did not even have to inform us when they did this, so we did not have available the municipalities that had passed local options. The only way we could find out what existed out there in the local municipalities was to try to contact them and get a response from them as to what existed. When they gave us their responses, we gave them to you. If that is not local option, I do not know what is. It was tourist exemption use, but it was done by the local people who did not even inform us what they were doing. That is local option, as we have said from the beginning.

One case that was, in my opinion, one of the most obvious abuses of the term "tourism" was the Longo's fruit stand, which became two legal cases, twice taken to court I should say, so I guess two legal cases. As a lawyer, is that correct?

Mr. Chairman: Two fees, anyway.

Hon. Mrs. Smith: The first time it was turned down because there was absolutely no documentation presented to suggest that Longo's was a tourist operation. At the second hearing, either Longo's or the municipality got someone to put together some sort of an opinion—they were hired to do

this—that tourists liked to shop in Longo's. This was submitted to the Supreme Court, and the Supreme Court therefore allowed the tourist exemption for Longo's Fruit Market, which is really just a grocery store, I assume, and made this judgement. They did, in fact, submit something. For that reason, they had jurisdiction to pass this bylaw, because they submitted something, and it should not be interfered with.

The sufficiency of the report is strictly up to them; there are methods of appealing other than by motion to quash, as has been attempted in this case. I agree with Mr. McTavish for the regional municipality of Peel that there is some evidence. However flawed the Malone, Given, Parsons report was, it constituted some objective evidence on which the municipal council was entitled to act. It is not up to me to substitute my discretion for their discretion. Council considered the findings of the report and passed this bylaw, as it was entitled to do. That is the ruling of the Supreme Court of Ontario, and if that is not local option, I do not know what is.

1540

Mr. Philip: May I ask a supplementary?

Mr. Chairman: If Mrs. Cunningham will allow a supplementary.

Mrs. Cunningham: Do you have a question?

Mr. Philip: Yes, a question on that.

Mr. Chairman: Supplementary for Mr. Philip?

Mrs. Cunningham: Yes, as long as I still have the floor.

Mr. Chairman: You do if you allow him.

Mr. Philip: Am I correct in saying that you have just testified that prior to introducing the bill you in fact did not have a list of where the local options had been used?

Hon. Mrs. Smith: I did not say that. I said we did not have it originally.

Mr. Philip: Did you or did you not have a complete list of where the tourist exemption had been used?

Hon. Mrs. Smith: We had a complete list before we completed first reading.

Mr. Philip: So prior to the introduction of the bill, you in fact did not even know where the tourist exemption was being used. How can you know there are abuses when you could not even give an account before you introduced the legislation of where there were abuses?

Mr. Chairman: I am not sure that is a supplementary, frankly, Mr. Philip.

Hon. Mrs. Smith: To say nothing of the fact that I have accused nobody of abuses. I want that on the record. I have said nothing about abuses. In my opinion, these were abuses of tourism. According to the judge of the Supreme Court who spoke, the municipalities had an absolute right to do that,

so there were not abuses. The municipalities could do what they pleased—they were an illustration of a municipal option—and since the Supreme Court so ruled, although I consider it abuse of tourism in my mind, as a legal entity, the councils had the local discretion to do that. The judge so ruled.

Mr. Philip: So you are saying that you decided to introduce legislation based on one case that was thrown out?

Mrs. Cunningham: This was not thrown out.

Hon. Mrs. Smith: It was ruled as adequate.

Mr. Chairman: Mrs. Cunningham, I am giving you the floor back. We have gone a little beyond a supplementary, I think.

Mrs. Cunningham: Just following along still, we did our homework, and it is interesting that the one case I brought today is the very case the Solicitor General is talking about. I know it very well. This challenge was upheld in the court.

Hon. Mrs. Smith: That is right, a local decision only.

Mrs. Cunningham: Right. You and I are right on on this now, I will tell you. It was upheld in the court, and I will tell you why. The "where it is essential" is quoted, and in the instant case where there was no evidence of tourist industry, they referred back to the municipality which did have, in fact, some criteria. They had criteria that supported the present legislation. The present legislation stated "where it is essential." Those were the words the judge used. Unless all the legal students who have been working this summer and checking with different law schools across the province of Ontario are all nuts and out to lunch, that is the closest we have come to the legislation not being upheld.

Hon. Mrs. Smith: I would re-read the clause.

Mrs. Cunningham: I just want to make it very clear. We both have the same piece of evidence; we have both agreed that the present legislation has been upheld in the courts based on the present Retail Business Holidays Act, based on the reference to tourism. Since I am speaking—and you will have your turn, every one of you if you want it, I do not care—to this particular motion, where we are now talking about reintroducing development of a tourist industry—and we have added, "or cultural industry" because we thought that is what the government was saying would be a problem; and it certainly was, in not a lot of the cases but a fair number, of concern to some of the witnesses before our committee this summer.

The municipalities are saying: "Look, we don't want it wide-open; we want a framework. What we don't want to end up with is everybody coming to us for all different reasons." There are a number of exemptions in the act. Nobody is arguing about it. But the one exemption that did in fact result in local municipal decision-making was the tourist exemption. What the municipalities are saying quite clearly is, "We will help you with it if it is a problem." I have to say that it is not a problem. The government has not proven to me or to anyone else that it is a problem. It is not a problem legally.

The only problem we would all agree to is that it is a hassle because you have to go to your municipality and you have to come up with certain

guidelines and you have to prove that you can fit your request within the present legislation, and that is a hassle. Can you imagine what the hassle would be if we did not have that particular framework meeting that particular guideline? We could have anything then.

That is the essence of this whole clause. There is no point to the Solicitor General's sitting up there and saying we have a local option now. We know we have a local option now around a specific framework. There is a big difference in saying we now have the local option without any framework at all.

Any framework at all means not specifically the tourist industry, not specifically the cultural industry, but anything else you want. It means big malls, "Come on in and prove to us over a period of time that it is worth it to be open on Sunday because all these people want to shop." That is the kind of stuff we are going to be looking at—not whether we are supporting, by the way, a very important industry in this province that relates directly to how well we do internationally and in every other way with our economy. That is why we are supporting tourism. To think that these industries could be closed down by this bill—I should not be talking to that, I should stay with subsection 4(1).

I think the Solicitor General has made the best case of all to reintroduce this definition, based on the presentation she made today and based on her agreement that the present Retail Business Holidays Act has been upheld in the courts. I must admit I thought there might be an instance today where she could show me that it has not been upheld, and that was my specific question.

Mr. Philip: But she didn't.

Mrs. Cunningham: I beg your pardon?

Mr. Chairman: I did not say anything. Mr. Philip said it. I do not interject.

Mrs. Cunningham: My point is, there is really no reason for not accepting this amendment. We all went out with an honest premise this summer and we asked the public for input.

I am going to go back to my final point, and that is the one that the government will raise. Never mind the Association of Municipalities of Ontario. They are just one of 217 individuals and groups that volunteered to assist us. The reason we did not push for it earlier is that the very next day—and on numerous occasions afterwards—the Solicitor General and Mr. Kanter stated that the municipal option is not negotiable.

I am going to close by saying this. Last week, as some of us were bantering back and forth, there was a delegation sitting before us. They said, "Look, this may be fun to you guys, but it is a quality-of-life issue to us." You can debate back and forth and have all your fun as politicians, as we may be perceived as doing right this minute, but in the end, these people took the time to come before this committee and sometimes got consensus around each and every word of their brief, in the case of numerous municipalities, before they could even make their presentation. To ignore that is to just simply to state that this government is not interested in open public government or the democratic process.

On that, I will rest my case.

Mr. Chiarelli: I was interested in hearing statistics on the process of the number of groups that have come before us. I really thank the clerk for providing to us a list of all the organizations or individuals who came and made their case.

Mr. Chairman: Actually, it was the research assistants. Credit should go where credit is due.

1550

Mr. Chiarelli: For example, in the case of Canadian Tire, there were 16 submissions. Please bear with me, because I think it is important that we consider where some of these briefs came from: Canadian Tire, Barrie, Brantford, Dundas, Hamilton-Wentworth, Hanover, Kingston, Lindsay, Niagara Peninsula, North Bay, Ottawa, Peterborough, SW dealers group, St. Catharines, Toronto suburban dealers group, Thunder Bay, Windsor-Essex. I can go through various interest groups included in the statistics that have made essentially the same submission in various communities.

Particularly, I want to bring to the attention of the committee the Ontario Automobile Dealers Association, and I could read a similar list. In almost every case, if not every case, the executive director of the Ontario association was sitting in the room, basically monitoring, sponsoring and helping the particular group.

Mr. Philip: He is a priest. He was praying for the Liberals.

Mr. Chiarelli: Please, Mr. Philip, I did not interrupt you. I would thank you not to interrupt me.

Mr. Philip: He was simply conducting prayers.

Mr. Chairman: Yes, Mr. Philip, interjections are out of order. You know that.

Mr. Chiarelli: The United Food and Commercial Workers International Union had 12 submissions; the Coalition Against Open Sunday Shopping, seven submissions; the Mormon church, seven submissions, and there were other multiple submissions. I think when we look at the statistics and people talk about 180 or 200 or 250 groups, it is important to realize that in many cases these are branches or chains of the same group that are creating this propensity for numbers. I think it is important that we keep that in perspective.

The other thing I want to do is to get down specifically to the motion that is before us from the New Democratic Party. If I may, very briefly, I will read a few words from the existing legislation, that is, the old Retail Business Holidays Act. It says, "Where it is essential for the maintenance or development of a tourist industry," and I note here that we have added, "or cultural industry."

Mr. Philip: It just goes to show we are listening.

Mr. Chiarelli: I am glad you are speaking, Mr. Philip, because I am going to address something directly to you.

Mr. Chairman: Through the chair.

Mr. Chiarelli: Through the chair, I will address the comments and the submission of Mr. Philip.

Mr. Philip has been around this place a lot longer than I have and he may be here a lot longer after I have left, but I must say this particular motion, this amendment—and I am trying not to use too strong language—to me, is a joke. The reason this motion or amendment is a joke is that it basically creates the local option.

If I can use the example of Ottawa first—I am going to use several examples—his motion here says, "Despite section 2, the council of a municipality may by bylaw permit retail business establishments to be open on any holiday, if in the opinion of the council it is essential for the maintenance or development of a tourist industry or cultural industry."

I think it is important that we understand that when it says "in the opinion of the council," that is a subjective test. In the case of Ottawa, if the city of Ottawa feels it is important, as the nation's capital, to maintain or develop a tourist industry, it could declare Ottawa wide open for Sunday shopping. This amendment that Mr. Philip has put on the table will cause Ottawa to have the right to declare itself wide open for Sunday shopping.

In the case of Kingston, for example, if in the opinion of the council of Kingston, for the maintenance of a tourist industry, it wants to pass a bylaw to keep up with Gananoque, which is just up the road and has opened under the tourist industry, it can basically cause wide-open Sunday shopping in Kingston, under this proposed amendment which Mr. Philip and the NDP have put on the table.

If we take the case of Toronto, the region here, it can very easily, subjectively, if the council so chooses, decide that it wants to maintain a tourism industry, as opposed to Buffalo or anyplace else, and it can pass a bylaw to create wide-open Sunday shopping.

I am disappointed to the nth degree that this particular motion and the mover of this motion could go through eight weeks and say what was said and hear the submissions that were made and put on the table a motion that essentially and effectively creates the municipal option and sit there and pretend that it is something different.

I feel that this motion establishes beyond any shadow of a doubt that the NDP and the mover of the motion cannot define tourism because, in effect, this is a copout. It is as much of a copout as anybody is going to get. As a lawyer practising for 19 years, I could advise any council it could cause wide-open Sunday shopping with this particular motion. With that, I rest my case.

Mr. Farnan: Just to respond to that very briefly, I think that Canadian Tire stores are probably individually owned. Certainly, I was conscious of delegations coming forward and saying, "I am leaving aside my text because I want to speak from the heart." I suspect that the workers in those Canadian Tire establishments were real people who wanted to have their views expressed.

If we get to be nitpicking about the delegations that appeared before us, if you look at the representation of the groups that came before us in opposition to this bill, they indeed were very large groups. We had large church groups, unionized employees, municipalities, women's groups. They were really very large. If I were to examine the nine delegations that appeared in favour of the legislation, I would wager that five or six of them were individuals speaking for themselves, whereas some of the groups speaking against were groups of 20,000 and 30,000.

It absolutely appals me that Mr. Chiarelli would question the fact that the United Food and Commercial Workers International Union would have made several delegations to this committee. After all, it is retail workers who are going to be the people who will be forced to work on Sunday as a result of this legislation. They are the individuals who are the most severely affected.

Mr. Chiarelli: Twelve submissions.

Mr. Farnan: Why would they not make 12 submissions? Why would they not make a submission at every possible stop? Basically, it is their quality of life, their children, their families, their interaction with their families. I am surprised that there were not more, and I am appalled that you would question why retail workers would take the opportunity to come before this committee.

The Vice-Chairman: Mr. Farnan, you have strayed a fair bit away from the motion which is on the floor.

Mr. Farnan: Okay, let me come back to the remarks of the Solicitor General.

Mr. Philip: He was responding to the remarks of Mr. Chiarelli.

The Vice-Chairman: I appreciate that. That is why I gave Mr. Farnan the opportunity, but perhaps we could get to the matter at hand.

Mr. Farnan: Thank you.

Interjections.

Mr. Farnan: I wonder if we could have some order, Madam Chairman. I really am trying to speak to this issue.

The Vice-Chairman: We can always have some order.

Mr. Farnan: Thank you. I will try again.

The Solicitor General referred to the reluctance of the municipalities to provide input. I do not think there was a reluctance. I think they actually provided very clear input.

The Vice-Chairman: Mr. Farnan, I should stop you. Your colleague Mr. Philip raised that in argument and it was responded to by the Solicitor General. It really has nothing to do with the matter on the floor, and I would ask you to confine your comments to the motion.

Mr. Farnan: I think it certainly is relevant to this hearing. If the Solicitor General comes here and for 15 minutes expounds a history of what took place, as a member of this committee—

The Vice-Chairman: In response to your colleague.

Mr. Farnan: As a member of this committee, if the Solicitor General gives a history of what transpired, surely a member present on the committee is entitled to have five minutes to explain in response to the Solicitor General. I think to deny a member five minutes to respond to the Solicitor General's remarks is unconscionable.

1600

The Vice-Chairman: I am going to say that if there is a response required, surely it should be from the member who raised it. Since the member who raised it was your colleague in your party, I am sure you can work that out.

Mr. Cureatz: On a point of order, Madam Chairman: As frustrating as this system is, believe it or not, each individual is elected from his particular constituency, and a chairman such as yourself cannot allude to the fact that another person in the same party has asked a question or has made comments about it; therefore, his colleague in the same party cannot pursue that line of questioning. That is not so. We are each individuals in our own capacity. Mr. Farnan has a concern that he wants to question on. If it happens to be along similar lines to Mr. Philip's, that is too bad. He is entitled to that.

The Vice-Chairman: You are quite correct that each member can comment. If I am asked to make a ruling, it would be that the matter does not relate to the matter on the table at the moment.

Mr. Cureatz: Try again, Mike.

Mr. Farnan: I am asking the chair for five minutes to respond to the minister's statement. I would be prepared for you to time that five minutes.

The Vice-Chairman: Just a moment.

Hon. Mrs. Smith: They can make a motion.

The Vice-Chairman: Are you making a motion?

Mr. Farnan: I am just requesting that I can respond to the minister's statement for a period of five minutes. I do not mind if you cut it off after five minutes, but I think it is a very modest request for a member of the opposition who has sat through weeks of travel and this is the first opportunity to address something to the Solicitor General. If you cannot give me these five minutes, so be it.

The Vice-Chairman: Since you are going to take the five minutes one way or t'other, you have them.

Mr. Farnan: Thank you. Basically, as we discussed this bill in the House—and I would like to give a different interpretation of history—opposition members in the House were not arguing that we go out to the province to discuss the detail and the process of the bill. We were arguing, in fact, that the bill was a bad bill. We were arguing against the substance of the bill. We were arguing against the local option. Indeed, that was simply what the municipalities were arguing against, and we went out to the province.

Now, I asked the chairman of the committee, "Will you tell the delegations as they appear before us that they should not address the local option"—would we write it on a piece of paper—"and that they limit their comments to the refinement or fine-tuning of the bill?" That was refused. I offered my question time to any Liberal member of the committee who would tell Ontario, through any delegation, that the government would withdraw the local option if the vast majority of opinion of delegations was overwhelmingly opposed to this provision. The Liberal members refused. No wonder they refused.

The Premier (Mr. Peterson) was saying, "This will not be watered down." The Solicitor General was saying: "It is non-negotiable. Without it, the bill simply does not exist. The local option will stay in the bill. It is the essence of the bill." In other words, the municipalities were right. They were saying, "We want input, but we want input into the essence of the bill." The people of Ontario were saying, "We want input into the essence of the bill." But the Solicitor General throughout the process, and even now, says it is non-negotiable, despite what the people of Ontario say: "No matter how many delegations appear before this committee, we are not going to listen. You may say what you want, but we will not listen."

When I hear a member of this committee say, "Isn't it awful that 12 delegations from the retail workers' union appeared before this committee? Isn't that an awful sham that retail workers should come before this committee in such numbers?" of course they come before this committee. I believe that is the history. Other governments have withdrawn legislation when they listened to the people and found that they were out of touch. All I can ask is that the Solicitor General at this late stage listen to the people of Ontario.

They have said to you: "Please withdraw this legislation. We do not want the local option." I believe I asked the question of many delegations: "If the government were to withdraw this legislation, how should they proceed?" The answer every time the question was asked was that the government should show it had the courage to say it made a mistake. It would go up in the viewpoint of the people of Ontario.

The opposite also holds true. To continue to proceed when you have had a very clear message from the people of Ontario and from the municipalities is sheer arrogance. It is too sad. I think that is the end of the five minutes.

The Vice-Chairman: You have 30 seconds left.

Mr. Farnan: Can I continue for 30 seconds, please?

The Vice-Chairman: I think we have now used it.

Mr. Farnan: I am only joking.

Mr. Chairman: Are we ready?

Mr. Philip: No, I have something else.

Mr. Cureatz: Is Mr. Farnan through?

Mr. Chairman: Do you wish to speak, Mr. Cureatz?

Mr. Philip: I have some questions.

Mr. Chairman: As a matter of fairness, if Mr. Cureatz wishes to speak, I will go to him first and then to Mr. Philip.

Mr. Philip: I always enjoy what Mr. Cureatz has to say.

Mr. Cureatz: That is strange. I can remember a time when you did not particularly enjoy it. It is so refreshing now. But we are working so well together on this legislation.

Mr. Philip: I always enjoyed when you were Deputy Speaker. You spoke a lot less.

Mr. Cureatz: No, I am going now, if you would listen closely instead of trying to talk to me, particularly on the proposed motion that has been brought forward by my colleague. If I might, my Liberal friend across the way, Mr. Chiarelli, indicated some dissatisfaction with my own colleague's presentation of the number of groups that came forward.

I was very impressed by his statement with regard to the number of years he has practised law. I congratulate him on that, but I can tell him, and I do not mean to be lecturing, but as one who has had some minor success in the political process with that kind of approach, you will be back practising law much sooner than you anticipate, instead of being an elected MPP.

Mr. Chairman: May I ask you to address the amendment.

Mr. Cureatz: I will, just in the manner that Mr. Chiarelli addressed the amendment, in which the chairman did not find it so fitting to rein in the lines. I was only assuming that you would allow me the same degree of latitude.

If you remember, Mr. Chiarelli indicated some disappointment and was trying to refresh our memories that there were a number of groups that made specific presentations. He indicated, disappointedly, along the same lines, if you remember, Mr. Chairman—or was it the vice-chairman who was in the chair?—that he was not particularly brought into line when he was pursuing that particular aspect of his presentation, although I think it is most appropriate to this amendment of section 4.

I remind all the committee members that, indeed, there were a number of presentations from various Canadian Tire store owners, but if he remembers, I can only think of one specific case in Ottawa where he got extremely heated out in the hallway over a particular presentation, to which I was, I must say, mildly sympathetic because from time to time there was an opportunity where I have been put in that position.

It is uncomfortable. However, I want to say to them, albeit he was carrying the standard of the Liberal Party, the tradition of no movement whatsoever on the principle of the bill, which I will remind Mr. Kanter we will have some fun with in another couple of minutes, about how we all sat here dutifully and listened to the chairman's advice to all of us as delegations came before us time and time again, I say to Ms. Collins.

Time and time again myself and my own colleague and my New Democratic Party friends indicated to those witnesses that, in regard to the local option, which section 4 of this proposed amendment is trying to alleviate, they can forget it. Do not be here.

1610

I can only refresh your memory about my own colleague from the NDP who indicated that this process was a sham. He was a little more vocal than I would have been. I like to phrase it in slightly more colourful language, but I can only refresh your memories about how the chairman in Windsor pleaded that during the summertime he would much rather be doing some other things than sitting here listening to these presentations. But how often—and I do have the utmost respect for our chairman—did he say: "The time is your time. You have 20 minutes. You are all here to listen"? We can all check that. That is pretty close to what the chairperson said.

But the reality of the situation—and this is why my NDP friend has brought in this proposed amendment to section 4—is that there was not a hope in Hades of ever moving the large Liberal majority caucus on the local option issue.

It was a most frustrating time for us humble, minor beings over here in the third party, so lofty as we were once, now downtrodden and forlorn, but notwithstanding our plight, carrying forth vigilantly, reminding all of you and attempting to remind those groups that came before us that they, too, were barking up the wrong tree, that they should have gone to Quetico and maybe made some attempt.

I can remind all of you that as various groups came forward from our visitations across the province, I indicated to them that the local option is a dead issue, just as the Solicitor General indicated to us earlier in her statement, of which I regretfully missed a good portion. But I am sure we will have the opportunity of hearing from her more.

Indeed, we indicated to those groups that they should be speaking to their particular MPPs, bringing forward the issue at Quetico at the major Liberal caucus retreat so that maybe there could be some movement on the local option issue.

I say to you that obviously there was no movement whatsoever on the local option issue. That is why I give full credit and marks to my NDP colleague for bringing forward this particular section, because I know exactly what happened in Quetico, although I was not there, nor did I have any prescience, but I have an idea of large, lofty majority governments.

I remember our little deputation in Brantford, where the local option was discussed. From that was derived my NDP colleague's motion here on section 4. I can remember Ms. Hart's little sojourn out to Prince Albert and Earl's Shell Service. It is interesting that I learned from the various close neighbours of that very fine community, although I am disappointed in the provincial representation they have sent here to Queen's Park for such a length of time. Notwithstanding that slight difficulty, I have it in my mind that the esteemed Treasurer (Mr. R. F. Nixon) has this idea because Prince George—

Ms. Hart: St. George.

Mr. Cureatz: —St. George is such a well-hewn, established community with such an openness and freeness to it that this is how the rest of Ontario should be.

I have a little feeling that at Quetico he faced the music. Let's face it, with his 25-odd years of canvassing across Ontario in places like St. George, Port Perry and Bowmanville, he persuaded all of you that the local option should stay. And lo unto us, my NDP colleague has brought forward section 4 of this bill to remind you once again what fallacy it is.

I started off with my comments to Mr. Chiarelli about his digression of chastising those particular Canadian Tire store owners. Oh, yes, you did. Nasty, nasty.

Mr. Chairman: I have allowed you some latitude because your colleague is quite right that I should have stopped Mr. Chiarelli. But now that we have gone on a very long travelogue through most of Ontario, perhaps you could get back to addressing the bill.

Mr. Chiarelli: A point of order—

Mr. Chairman: Mr. Chiarelli, you object to interjections. I would ask you not to interject either. Perhaps we could get off the travelogue and go back to the amendment.

Mr. Cureatz: I will get back to my original concern. That was Mr. Chiarelli's point that section 4, as opposed by my colleague Mr. Philip, was totally out of order, that if we were relying on section 4 by looking at the number of deputants, we should take into consideration that the number of deputants was indeed repetitious.

I wanted to point out that we were very shrewdly calculating individual deputants who were coming forward and that calculation led us to believe that indeed there could be some negotiation with regard to the proposed amendment to section 4 as indicated in clause 4(1)(a), "the development of a tourist industry," and as we proposed through the various deputants' presentations, "a cultural industry."

But no. What does Mr. Chiarelli say? He says we should lump all those individual groups from Canadian Tire together. I say to him, interestingly enough, he should speak with Don Thompson. You were not there in London, Ontario, I do not think. You were not there in Brantford, Ontario, I do not think, when Mr. Thompson, one of the largest owners of a Canadian Tire store in the Stratford area, whose provincial representative is Hugh Edighoffer, our established Speaker of this House, indicated great displeasure to such a degree that he got very emotionally worked up, something which I restrain myself from doing. He indicated with harshness that he was speaking for himself as a Canadian Tire store operator and for all the employees in that area, including London, Ontario, I say to our esteemed visitor in the public gallery,

Mr. Chairman: Mr. Cureatz, let's come from the travelogue to address the amendment.

Mr. Cureatz: Section 4 relates specifically to the local option, and I was indicating to Mr. Chiarelli that those groups he lumped together should not be lumped together. I can refresh his memory. I do not think he had the pleasure of visiting Orillia and that wonderful hotel setting that Mr. Kanter and I enjoyed very much, the Highwayman Inn off Highway 400. The largest Canadian Tire store owner in Canada, with about 1,200 employees, came forward and said: "We do not want the local option. It should remain with..." Who else?

Mr. Chiarelli: It is in Mr. Philip's—

Mr. Cureatz: That is right. Indeed, Mr. Philip has come forward with this proposal so that an interpretation of "tourist industry" and "cultural industry" can be maintained and developed.

I can digress for a moment and indicate that my esteemed fresh new colleague from the hustings who won a particular by-election on this particular issue of Sunday shopping and a number of deputants whom she had approached—and no doubt all of them indicated they would be of some assistance to evaluate and help us interpret "tourism."

This only brings to mind the minister. I have to say in my opening remarks, when the Premier swore in his new cabinet, if you look back in Hansard, as the critic for the Solicitor General, I gave glowing credit to the fact that our present minister was the first female minister holding that post.

Mr. Chiarelli: On a point of order, did he just say he was still on his opening remarks?

Mrs. Cunningham: Yes, that is what he said.

Mr. Cureatz: Interestingly enough, I indicated there may not be—
Interjection.

Mr. Cureatz: I am working on section 4.

Mr. Chairman: You are coming at it by long distance.

Mr. Cureatz: I am, because I want to talk about the Court of Appeal, the Canadian Lord's Day Association and the regional municipality of Peel.

Now I am a little bashful that I even congratulated the minister on not being a learned colleague of the law—which you are, Mr. Chairman, and that is why you are being so tolerant of me—if indeed it was interesting that she was not, but why not have a person who was not necessarily of that cloth. Yet I am beginning to waver a little bit, and I know that message will be passed back on to the higher echelons. In the next cabinet shuffle, there will probably be a lawyer in that position.

She is concerned that the courts cannot define "tourism." This is why my colleague from the NDP has come forward with this amendment. We are cheating a little bit, of course, because I am trying to save on time. We are looking at the headnote—

Mrs. Cunningham: It is not even—

Mr. Cureatz: Oh, it is not even a headnote.

Mrs. Cunningham: Yes, it is a headnote.

Mr. Cureatz: Of course, you remember, Mr. Kanter and Ms. Hart, from law school how we had all of those cases and we had to quickly look at the head note and not read the—and you too, Mr. Chiarelli. I know we were not supposed to rely on the head notes, but could we have ever made it through all those cases if we did not?

1620

Mr. Kanter: No.

Mr. Cureatz: That is right, thank you. We agree on one thing. Now here is what it says, too, Mr. Chairperson. This is why we brought in this amendment to section 4, where "it is essential." In the instant case, there was no evidence of the tourist industry. The clear wording of subsection 4(2) made it necessary for there to be some objective evidence of material produced to satisfy the requirement of the subsection. If this were not so, there would be no reason for the subsection's particular and peculiar—peculiar, I must stress—wording.

In other words, the court is saying that, indeed, there can be a particular definition, and lo and behold we hear from the minister, time and time again, that we cannot, by any stretch of the imagination, come up with a definition notwithstanding all the deputants that my colleague, the member for

London North (Mrs. Cunningham), has asked who have said they would give us some assistance to come up with a definition. Lo and behold, the courts have come forward.

In addition, I say to Mr. Chiarelli, with regard to the Canadian Tire owners—of which I still have a long list, but he did specifically mention the auto dealers—that in terms of my humble experience, I have never been one to centre out specific groups of people because individuals make their own presentations. Each constituent is a person unto himself. Indeed, as I said to the vice-chairman when she was in the chair—and I do not know what line of thought she was off on trying to bring Mr. Farnan into line—we, as individual members, have the opportunity of expressing our thoughts and our concerns in the manner—

Where are you going, Mr. Philip? You might come on yet for another couple of minutes.

Interjection: Hurry up.

Mr. Cureatz: I can only say that indeed the car dealers expressed—if you recall, were the— Let me see. You were in Ottawa. You were in Kingston.

Mr. Chiarelli: Bill Davis was there, too.

Mr. Cureatz: That is right, and good for him. Do you not have Moira, and before her, or along with her, Hershell, who is long gone, and Vince Borg—is he not going to be tying all you backbenchers up in a nice little tidy package, telling you which way to vote?

Listen, I am sympathetic. I am sympathetic because I happen to have been in that position once before where I had to sit patiently waiting for the opposition to come forward with their thoughts and concerns, as I am about section 4. And what is happening? It is falling on deaf ears.

What is so surprising and I can only bring to mind, you know, the Peterborough Examiner, how can— I am just astounded how you humble, quiet, meek backbenchers could sit there week after week. Mind you, not all of you sat there continuously, so you had a break from the onslaught. John, you were pretty good. You hung in there for a long time.

But, strangely enough, when we took the gobbledegook that the: "Oh, yes, you were here because the local option. The major principle of the bill would be given some consideration." I can remember specifically in Peterborough where our esteemed clerk said that she would specifically investigate the possibility—

Clerk of the Committee: I was not there.

Mr. Cureatz: That is right. Who was that? —the possibility of clarifying what the principle of the bill meant. But lo and behold, you know what happened? We should have ended it all there, and this is why my colleague has brought forward, from the NDP party, an amendment to section 4, because there, after we had those hearings in Peterborough, where we stayed at the Red Oak Inn, had a glass of Perrier later at night because one of the press members, Mr. Walker was leaving—

Mr. Chairman: Let us not have the menu.

Mr. Cureatz: I am just adding some colour. Lo and behold, Meg Milne from the Peterborough Examiner—it says here Examiner staff writer—she did the whole thing for us. We should have stopped at Peterborough. Mind you, we should have stopped at Collingwood because the Premier came forward up in Collingwood and you should have heard Farnan, for those of you who were not there. Talk about the sham, and here was the Premier saying that the principle of the bill is not going to be changed. How many deputants did we have come forward before this committee actually thinking they were going to do something?

Now, come on. Look, you know what Davis, the old Premier, used to say: "Look in your heart of hearts." Boy, if you did, which I know you did, but you did not dare because you are all waiting for the call from the Premier to make it into cabinet. I will tell you, he has not made the shuffle yet. God help me, I do not lose my voice. He has not made the shuffle yet.

Mr. Chairman: Mr. Cureatz, thank you very much.

Mr. Cureatz: I want to bring to the attention of the committee—"Queen's Park Will Not Change Sunday Shopping Stance." Smith, is that you? Is that you? Here is what she said, Meg Milne: "Smith said"—I can only imagine it is the one-and-only Smith—"in a telephone interview from Toronto, the so-called"—Here it comes. You want to talk about section 4. You want to talk about the amendment—"local option will stay in the bill. It is the essence of the bill."

Will someone please tell me why we travel all across the province—outside of our per diems, which I know are so lofty and now half of them are not even tax free—why we even bothered to travel all across the province. You Liberal rascals sat there like bumps and seals and let these people think they were going to have some impact on local option? Even I, who have seen a lot of things, was a little disillusioned, and I am looking at you. You are all new except Christine. I thought there would be a glimmer of hope. I thought there would be some reason. I thought there would be, indeed.

Look, I know I was there. I should have spoken up when Bill Davis brought in a couple of whacky ideas, but I did not. I sat back on my haunches and look where we are, third place. One, two, this is two seventeenth of the caucus. If we have a caucus meeting, we can meet in a telephone booth. I will tell you, it is going to happen to you guys because none of you are standing up in regard to this piece of legislation. This is why my NDP colleague—

Mrs. Cunningham: Except for Chiarelli. He is convinced he is going to get re-elected.

Mr. Cureatz: That is right. Well I have news for him.

Mr. Chiarelli: No.

Mrs. Cunningham: Yes, you are.

Mr. Cureatz: That is why my NDP colleagues—

Interjections.

Mr. Chairman: Mr. Cureatz, we appreciate your comments. Mr. Philip was the next speaker on the list, but he is not here.

Mr. Cureatz: I just wanted to wrap up.

Mr. Chairman: A wrapup.

Mr. Cureatz: A wrapup, that is right, and say that the deputants who brought forward the aspects of the cultural industry is the area in which we had spoken to; and to be colleagues, we will admit to that. We have to work along. We are both opposition parties. Obviously, you are the official opposition, and we are the third party. Indeed, that is why we brought forward our concerns about the cultural industry.

We would probably like to conclude, as time is winding down, by bringing in some concerns about why you stated on day 4 of the public hearings that the municipal option is not negotiable. That goes to why we were bringing in a section 4—or the NDP are bringing section 4, specifically—because, indeed, we want to stress that we have concerns, obviously, and it is not to say that we ourselves might not bring in something about the local option. This is why we are supporting this amendment to section 4, but we are concerned about the process.

There must have been a time, I guess, where some committee tooted all around the world and led the deputants who were coming forward to committee to believe they were actually going to say something in evidence when it is on the bill. I cannot think of one, even in my tenure here, but this one, sure, I have to almost border to say, but I know it is unparliamentary so I cannot say that this committee misled all those deputants. I will not say that, because indeed it is unparliamentary, but it strikes me—

Mr. Chairman: It now being 4:30 of the clock, would you like to move adjournment.

Mr. Cureatz: I would like to move adjournment and continue tomorrow morning at 10 o'clock.

Mr. Philip: Mr. Chairman, I wonder if we could start later. I am not feeling very well. I had a terrible nightmare last night. I dreamt I was charged with murder and then the dream got worse—

Mr. Chairman: Here we go again.

Mr. Philip: I dreamt Mr. Chiarelli was my defence council.

Mr. Chairman: You used that one on me, as well, Mr. Philip and I said I also had a nightmare that I would accept that brief.

The committee adjourned at 4:30 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Thursday, October 6, 1988

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Ms. Poole

Collins, Shirley (Wentworth East L) for Mr. Keyes

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, October 6, 1988

The committee met at 10:05 a.m. in committee room 2.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act.

Section 4:

Mr. Chairman: I recognize a quorum. Mr. Philip was here. He is out in the hall.

Mr. Cureatz: Mr. Cureatz is here.

Mr. Chairman: Mr. Cureatz does not seem to be here, so we will pass on to—

Mr. Cureatz: I am here. Do not get fresh.

Mr. Chairman: Sorry, I did not see you.

Mr. Cureatz: I just want to make sure I do not get in the position of almost losing my voice, as happened yesterday.

Mr. Chairman: We are praying for your health.

Mr. Kanter: If you were more concise, you might have fewer problems.

Mr. Cureatz: Well, in the interest of trying to make this as interesting as possible—

Mr. Chairman: You are the only person that Hansard can hear standing up. It is amazing.

Mr. Cureatz: Oh, I have Bill Ballinger coming in. I finally have an audience that I can speak to, someone who would have an appreciation as to why we are so supportive of the New Democratic Party motion, the amendment of section 4.

Mr. Ballinger: Where is Sam? I want to sit right across from him and bop him right on the end of the nose.

Mr. Cureatz: I am only disappointed that the minister is not in attendance. Will she be coming forward? Does anybody know?

Mr. Ballinger: None of your business.

Mr. Cureatz: No, I am serious. Will she? Some of my remarks are directed right to her. I have been thinking about them overnight. I want to ask her a couple of questions.

Mr. Chairman: All right, go ahead and proceed.

Mr. Ballinger: Try to be nice today.

Mr. Cureatz: Well, it was so much more pleasant yesterday when we did not have to put up with you, but I know you were on a great clandestine tour of the wonderful riding of Durham-York, you and one other person. I am sure it was a great revelation to the Liberal caucus.

Mr. Ballinger: It was a great media event.

Mr. Chairman: I do not think I need to caution members that we have three days to deal with this bill, and I think we should get on with it.

Mr. Philip: I thought it was just my amendment that we were spending three days on.

Mr. Cureatz: Is the minister coming, Mr. Kanter?

Mr. Kanter: You have the floor, Mr. Cureatz.

Mr. Cureatz: Is the minister coming? You do not know.

Mr. Chairman: Mr. Cureatz, to assist Hansard, perhaps you could have a seat.

Mr. Ballinger: What is this? Is this the latest game or what?

Mr. Cureatz: I am just trying to wake up. I mean, it is tough to get an act on at 10 o'clock in the morning. As Christine will tell you, I am more of an afternoon person.

Mr. Ballinger: Actually, I brought this today to remind myself when you were all in a congenial mood and we captured you live on film.

Mrs. Cunningham: He will not be disappointed.

Mr. Ballinger: I am going to put that right there, and every time one of you guys steps out of line—

Mrs. Cunningham: The neat thing about this committee is that we are still congenial.

Mr. Chairman: I think I have lost control of this meeting. It is only 10:10 a.m. What is going to happen by noon?

Mr. Cureatz, you have the floor.

Mr. Cureatz: Right. I would like to know if the minister is going to be in attendance, because actually, strange as it may seem, my remarks this morning will not be any longer than they have to be. I do not want to tie up unnecessarily the committee's time. I would like to know if the minister is going to be in attendance. Is that part of the deal, or will we not really have to have her in attendance? We need some direction.

Mr. Chairman: You do not have to have her in attendance. The parliamentary assistant is here, and the minister indicated at the outset that what Mr. Kanter said was what she would say. However, if you wish to inquire

of Mr. Kanter whether she will be here, go right ahead, but let's get on with it.

Mr. Ballinger: Would you sit down? You are making me nervous.

Mr. Cureatz: I am just trying to get warmed up for this. It is tough sitting down and thinking. It is easier with the blood flowing up and down. Is the minister going to be in attendance?

Mr. Kanter: Mr. Chairman, unaccustomed as I am to being hectored by Mr. Cureatz, I am told that the minister is in a meeting. She asked me to advise her when her presence would be useful at this committee. I advised the minister that we might be on the present motion for some time.

Mr. Chairman: You have your answer. Would you like to proceed?

Mr. Cureatz: Needless to say, I am most disappointed because actually I was going to centre in on behalf of all the Liberal backbenchers and specifically point out to the minister the concerns that we have and the reason we are supporting our colleague's proposed amendment to section 4.

I do not know. I say to the parliamentary assistant that I strongly urge him to contact the minister. I think, on this side of the committee, we will be continually bringing to everybody's attention that the minister has not seen fit to be in attendance over what we feel is a very controversial piece of legislation—

Mr. Ballinger: Surprise, surprise, surprise.

Mr. Cureatz: —not to disappoint you, I say to Mr. Ballinger.

I hope you will relay that message to the minister. I suppose we have no particular authority. I guess there is no use walking out because the minister is not in attendance.

Mrs. Cunningham: We waited for her yesterday.

Mr. Cureatz: Did we?

Mrs. Cunningham: You have not had an answer to your question.

Mr. Cureatz: No. He said that she will be in attendance when we have asked her.

Mrs. Cunningham: She asked to be advised.

Mr. Chairman: Mr. Cureatz, you have gone over that point several times. Could you address your comments to the motion?

Mr. Cureatz: The point is, I am insisting. What am I doing? She is not coming, so that is the answer.

Mrs. Cunningham: Well, Mr. Kanter has not answered.

Mr. Chairman: He has answered.

Mr. Chiarelli: On a point of order, Mr. Chairman: Just to refresh our memories in terms of what motion we are dealing with, are we still on the motion of Mr. Philip which creates wide-open Sunday shopping?

1010

Mr. Chairman: We are still on the motion of Mr. Philip.

Mr. Cureatz: I was here in the days when Bob MacQuarrie was here, a fine representative of that area, and we will look forward to the day when that happens again. I mean, with those kinds of nonsensical interjections—

Mr. Ballinger: You will be dead and buried by that time.

Mr. Chairman: Mr. Cureatz, get on to the motion. There will be no interjections. It is a quarter after 10 now, and we have literally wasted time. Let's get on with it.

Mr. Cureatz: Okay. It is too bad the minister is not here, because I really wanted to bring out some concerns. One of the concerns is about the procedural method of the committee, Mr. Chairman. You want to talk procedure. I gave Erskine May back to my office. I guess I should have lugged it back in again this morning.

I know my NDP colleague has brought in the amendment, and this is why we are supporting it on this side of the committee. It is the typical cleverness aspect that the government members so often find themselves lurching into and then getting themselves in the position of not knowing how to get out. It reminds me of the cottleston pie in the Tao of Pooh, Mr. Chairman, which you and I have had the opportunity of discussing from time to time—that is, cleverness.

Mr. Kanter: Is that parliamentary?

Mr. Cureatz: You do not know Winnie the Pooh bear, the Tao of Pooh?

Mr. Ballinger: I stepped in some this morning.

Mr. Cureatz: The whole nutshell, I say to the audience, all four of you, is that the theory of cottleston pie is that cleverness is not number one. Your cleverness in putting the local option on the municipality is lousy. That is the bottom line.

Mr. Kanter: We could hardly put a local option anywhere else, could we?

Mr. Cureatz: No, indeed. If we take a look at the tourism aspect, which my colleague the member for London North (Mrs. Cunningham) has been discussing time and time again, and this is why my colleague from the opposition is disgruntled—

Mr. Kanter: That hurts, that hurts; I can see that hurts.

Mr. Cureatz: —with whom we are working so well together, and has brought forward this proposed amendment. Your cleverness is going to fail.

Mr. Ballinger brought the picture. Individually I have gotten to know him quite well. Ms. Hart, from time to time, would be so kind as to let me take her out to lunch or dinner. But do not worry, Dianne. Do not get jealous. It did not go any further than that.

She was trying to placate me. She could report back. I know the games. I have seen them all and this is why I am really going to town to support this amendment, because you were trying to subdue me in any quiet manner possible.

Mrs. Cunningham: Now that you have ruined our family life, Sam, why do you not just continue on?

Mr. Cureatz: I told you: It was not intimate. Do not get jealous. It is okay.

Mr. Chairman: Does anybody realize that copies of this Hansard are being sent out to every member's family?

Mrs. Cunningham: Yes, I do. That is what I just said.

Mr. Cureatz: I want to say, notwithstanding the coyness, the smoothness that you, individually, have attempted to use on us humble beings, that it failed.

Mr. Chairman: I think the amendment is here, Mr. Cureatz.

Mr. Cureatz: There is no way that I am going to be supporting what the minister and all of you are proposing in terms of the local option. That is why we are going with this proposed amendment.

Do you know what? Mr. Chairman, you will really like this.

Mr. Chairman: I am waiting with bated breath.

Mr. Cureatz: Right. It is so frustrating talking to all these new Liberal backbenchers, because I am telling them the truth. My old law partner, now a judge appointed by Trudeau, still reminds me of the time that he told me—

Mr. Chairman: You know him well, do you?

Mr. Cureatz: That is right. He said: "You know, Sam, if you want to fool somebody, you tell him the truth, because he will not believe you. If you are upfront and say, 'This is the way it is; this is what really happened,' if you are in politics, he will not believe you." I try it now and again, and it is absolutely true. It is a fact.

I am saying to the backbenchers, support the amendment, because if you do not, you know what is going to happen. I have known you individually, and I speak only in terms of Liberals as a group, but individually, as much as I like you, you do have to win the next election.

Mr. Ballinger: We will let the electorate decide.

Mr. Philip: That is not necessary, Sam.

Mr. Cureatz: Two of you are going to come back. There are six of you. Okay, two of you are going to come back. I know you can count the chairman in that, because he is trying to be as unbiased as possible. If you go along with what the minister is proposing, two of you are coming back. So look to the left and look to the right and decide which one it is going to be. But you have hope.

Mr. Ballinger: You don't know what you're talking about.

Mr. Cureatz: This is the truth of the aspect of why I am saying you should be supporting section 4.

Mr. Ballinger: You don't know good legislation when you see it.

Mr. Cureatz: I am going to tell you, the member for Durham-York, that the truth of the matter is—but you will not believe me. I know you had your fancy caucus up in Quetico, and you probably gave the devil to the Treasurer (Mr. R. F. Nixon) and the Premier (Mr. Peterson) about how you are taking flak. Look, the Solicitor General (Mrs. Smith) is not even here. Now, does that not gall you?

I will tell you, the same thing happened to me when I was sitting over there. We were carrying a lousy piece of legislation, and where the heck was the minister who was supposed to be carrying it? I asked, "Does he not have the nicety, the civility of coming forward?" You guys are carrying the brunt of this. I mean, it is so disgusting.

Mr. Chairman: Mr. Cureatz, you have lost two members of the audience. I just thought I would tell you that. Actually, they left rather quickly.

Mr. Cureatz: That is why I am strongly urging you to look at the proposed amendment. I tell you, it is the truth, but you do not listen. It is the old story. You tell them the truth and they do not listen. I should be telling you something else, and then maybe you would be thinking about the truth. Surely you are reasonable. I know you are.

You have to cut some of your own cloth on some of this stuff. Trust me. In the next election, when you are knocking on doors, there are going to be people saying: "Liberal? Sunday shopping, wasn't it?" Worse yet, they will smile at you and they will not tell you anything. You will feel good and you will report back, "Gee, it feels really good out there." But you will get a sense in the back of people's minds.

I got the same thing the last go-around. You think it was so easy for me knocking on doors, trying to defend free trade, with David Peterson's bottom line, six points, wherever they are now. What a great ploy that was.

Mr. Chairman: Back to the amendment.

Mr. Cureatz: That section 4 will make or break four of you. You have had the opportunity of being in the committee and seeing how this is unfolding. To heck with your other Liberal colleagues—

Mr. Ballinger: How can you say that? You have never guessed right yet.

Mr. Cureatz: —because they are not here. They do not know the impact. I have never, and I do not think any of you have, seen the kind of delegations that we saw come forward against this legislation.

Mr. Ballinger: You never attended a planning meeting, did you?

Mr. Cureatz: The member for Durham-York is such a know-it-all.

Mr. Ballinger: You are the know-it-all.

Mr. Cureatz: What did Tom Watkins say?

Mr. Ballinger: I am not going to sit here and listen to a soothsayer.

Mr. Chairman: Well, you are going to.

Mr. Cureatz: The funster from the committee, was that not it? The former mayor of Uxbridge.

Mr. Ballinger: Quit prophesizing to us. Get on with what you are going to say and say it.

Mr. Cureatz: I am getting on with it, and I am saying I have given up hope on you. There are five of you. Mr. Kanter is locked in. He sold his soul to the ministry. There is no hope there.

Mr. Kanter: For eight thousand bucks a year.

Mr. Cureatz: There are four. I cannot believe our esteemed, learned colleague, the antagonistic member from Ottawa, practised law for 19 years. With that kind of attitude, how have you ever kept clients? I would like to know.

Mr. Chiarelli: But how did you get re-elected by toeing the party line?

Mr. Cureatz: You are right. I will tell you something. Funny you should ask that. You know what? I did not. This is the biggest mistake I made when I was on your side. I did not speak out enough. It was not until the end when I spoke up.

You know what happened? They put me in cabinet, and by that time it was too late. We lost the government. I curse myself that I did not speak out early enough, and I am serious, on these kinds of section 4s. I did not stand up in caucus. I did not stand up in my riding early enough. I did not go running to the Globe and Mail and the Toronto Star—

Mrs. Cunningham: And the Sun.

Mr. Cureatz: I should have criticized the Premier and some of those cabinet ministers who were coming up with cocky ideas. I did not do that; but what I did do, I wrote this place off.

I will tell you some of the things that happened, like these section 4s. I remember that Frank Miller brought in this tax on women's hygienic products. I knew we were in trouble when I went back home and caught hell from my wife. She said, "What are you jerks doing down there?" and I knew we were going to be in trouble on that one. Holy smoke, did we take heat. But no, I played the game a little bit and I said, "I will not be too critical, and I am just going to write this place off and look after my riding." The only Godsend was that I attended all those functions, gave all those speeches, kissed the odd baby, gave out the pins and pens and flags, the whole thing. That is what did it.

But listen, some of you will not have the opportunity, because you are farther away. You are lucky you are close. You are far away. Ron is right in town. Christine is here. You are in trouble. You cannot go running back and

forth to Ottawa every day, as I have the opportunity of trying to do, and meet the people. You are going to have to cut some cloth on this section 4. Listen, do not get lulled into thinking that someone back there, Moira or Vince Borg—Fred is on our side.

Interjection: What happened to Hershell?

Mr. Cureatz: I am not finished with him yet. I am getting around to it.

Do not get lulled into thinking that someone back there has a checklist to say, "Oh, yes, there is Mr. Chiarelli. He is so good," and a little check, "He went to committee on time," and he adds up all the checklist. When the Premier is going over the cabinet shuffle, do you think he is looking at the checklist? To heck. There is only one thing that gets those big jobs, and it is political leverage: who has the opportunity of positioning himself so that they have to put him in, or who has been a little vocal, as I was at the end, and they had to put me in because they were too afraid that I was going to start talking out really vocally against them. This is the kind of stuff.

Now look, if you really feel in your heart, "Great, it is going to be wonderful," that is another thing, and I can respect that, but I know that some of you do not. That is why you should be centring in on supporting this kind of amendment that has been brought forward by my colleague. I tell you, it is going to make or break you for the next election.

It is like Mulroney. Do you think he is going to make it back with 211 seats? Of course he is not. He might squeak through, the way the Liberals seem to be going at the moment. He might squeak through with a small majority government, and you guys might make it through with a majority government next time around, you know? But I will be darned if I am going to sit, as I did for all those years as a government backbencher, and see stuff like this. I have not even got going on the quality of life, but I will save that for later this afternoon. I have a suspicion I will have the opportunity of speaking to other sections of this bill.

I have not even got through emphasizing that some of you should be speaking out against this if you feel strongly about it. As I say, if you feel strongly that it is a wonderful piece of legislation and the sun rises and sets on it, that I can appreciate. I do not believe that, I really do not, because some of you have seen the kind of animosity.

1020

Now I say to Fred and the Conservative Party, do not think I am just picking on you guys and I am just going to be yelling and screaming. You see, we got a fancy letter from our leader reminding us that the party is in debt, and he wants some money from our associations. I am going to be speaking out and saying: "Well, Andy, we know what you think of my qualifications around here, don't we? And you are asking me for some money? Okay, Andy." I will just go back to my riding association and say: "No problem. You want a cheque? You want a cheque the way that you are so supportive of me?" You can just imagine what the answer is going to be: Do not think I am just dumping on you. I am going to be dumping on some of our own people because, notwithstanding the 16 or 17 members that we have—

Interjection.

Mr. Cureatz: They have their own problems. We could talk about Mike Breagh, but we are getting away from section 4.

Mr. Ballinger: Were you ever on it?

Mr. Cureatz: But you will be hearing some more about me and our own wonderful party and the delay of the leadership and where the hell we are going, which at the moment is just spinning our wheels.

Is this not fun, my standing here trying to convince you people? I mean, it is tough going. There is only one fellow that I have some hope for over there, because he is a long distance away and he is going to have to cut his own cloth in supporting these particular sections.

I want to finish off. I wish the minister were here.

Interjections.

Mr. Cureatz: I know. Can you believe it? I wish the minister were here because I wanted to ask her those questions that I know you people would have loved to ask her. But I know she will show up some time yet, will she not? Then I am going to make sure I get on because I am going to carry these things with her, and I am going to ask. Will you tell her ahead of time what I am going to ask her, "Tell him what you are going to tell him, tell him and tell him what you told him." Here is what it is going to be.

This is a question on behalf of all you Liberal backbenchers who, at the moment, do not have the intestinal fortitude, the guts. You are too wimpish to say openly: "Joan, would you please answer this for us?" Why, in the Toronto Star, August 2, "Solicitor General Joan Smith says the legislation's local option clause is strictly non-negotiable, regardless of what the all-party legislative justice committee decides." I am asking you to tell her and I am going to ask her when she comes back, because she deserves it and you all know that, and I know you are in a tough position to stand up and say it, but not moi. I am the third party, right? I am the opposition. That is what is so fun about the parliamentary process.

She is going to be sitting there yet before this is all through, and I am going to be saying: "Joan, it is obvious to me why Gord Walker lost. It is obvious to me that he was way overrated, and obviously he was way overrated, because you won." I will tell you, with her coming out with that kind of statement—did we even start? When was this, August 2? I cannot remember; I have been bouncing around the province so long in all those wonderful hotel rooms.

How could she do that to you guys? Even I felt sympathetic. You know, you are there listening to all this stuff, people complaining about the local option—and that is why I am supporting Mr. Philip's proposed amendment—and darn it, she comes out with this statement. I mean, could she not have said nothing? Could she not have been a little political and just said, "Well, you know"—you know the way she is—"the committee is on tour, and we are going to see what it has to say." She could have said that at least and let you people off the hook. No. What does she do? Blows you out of the water.

Oh, I wish she were here. But do not worry. This is my sort of prelude. When she is here, I will be really in flying form and really give it to her again. If not, I will get her in the Legislature, if she is there. I have three years. There is lots of time left. I am going to say: "Joan, why did you

do that to your backbenchers? This is why they should be supporting the amendment to section 4; if nothing else, just to put you in your place," although, you know what? I actually do not believe she supports the local option. I think she would be half supportive of the amendment to section 4. We all know Bob Nixon and David Peterson are behind this whole schemozzle. They have themselves locked in and they do not know how to get out.

Mr. Ballinger: What happened with Hershell? You were talking about Hershell.

Mr. Cureatz: He is gone. Hershell is finished. He has had enough.

You remember on the committee how many people came up to me later and said, "We did call the Premier's office, but we wound up talking to some guy named Hershell." Can you imagine? Hershell was hearing it all. Maybe he had enough and that is why he is getting out, although we all know the real reason is he is working for the federal party. He is waiting for John Turner to lose so that Davie can run to be Prime Minister of Canada. That is great. That will give us a chance again.

Mr. Chairman: Let's get back to the motion.

Mr. Cureatz: Why the Solicitor General ever in her mind came out with that statement about the local option way back in August when the committee was just starting—and here we are supporting my colleague's amendment to section 4—I will never know. I wish she were here. You had better tell her ahead of time that I am going to be asking her.

Of course, she is going to say, which she sort of alluded to, "Oh, well, it was the principle of the bill and it was passed." That is the standard parliamentary reply. Listen, I was around running the parliament longer than she has been a member, and she is using that line on me. Come on, Minister, let's get on with it and let's get on that you blew it. You should at least have had the decency of allowing the committee some parameters to hear what the people had to say, that they were against the local option. That is why I am supporting my colleague's amendment to section 4, but she is not.

Then what happens? Do you know what happens next? I cannot believe it. There was the Toronto Sun, Tuesday, August 16. If the Solicitor General does not fall into the trap, do you know who falls in next? Do you recognize this guy? Remember from the campaign, the "Hiya" campaign—"Hiya, how are you?"—riding on the bus? I felt so sorry for him during that election. I put a picture of the Premier and me in my pamphlet just to give him some recognition.

Mr. Ballinger: We know why you put it in your pamphlet.

Mr. Cureatz: I felt so sorry for him, I wanted to give him some recognition. Do you know what? It did not even help. It did not even help the Liberal candidate. I won. I do not understand it. I do everything I can for him and what happens? He comes out with this statement back on August 16—I underlined it in red because everybody has a red tie—"We are very comfortable with the idea of the local option and municipalities making their own decisions."

I probably know the Premier better than most of you people because I worked as Deputy Speaker. That is why I got in so much trouble with my own party. I listened to him too much. Davis gave me the old axe. If he were

sitting here, I would say: "Premier, you are making a mistake on this. Why not go with the proposed amendment on section 4? You can get your way out."

Remember open government? I remember when that cabinet was sworn in in 1985. What a show it was down in the front. You guys were not even around here. Holy smokes, free hotdogs. He had the various religious organizations and the Bible up on stage. Sean Conway was there, and it was a heck of a show, open government. So it is open government, and we are running around the province talking about local options.

My colleague brings in the amendment to section 4, and he comes out halfway through—no, just starting. We were in Collingwood. Mike is not here. Remember, Mike came out with the duck chicken. Can you imagine his calling that a chicken? However, he blew that one. Notwithstanding that, he did have a point.

Mr. Chairman: Is this Mr. Farnan you are talking about?

1030

Mr. Cureatz: Yes. The Premier comes out and says they are comfortable with the local option. Why would he do that to you people? I just could not believe it. I will tell you this thing about Bill Davis, the Premier. He was pretty crafty and smooth; you would not catch him saying something like that. He was just as smooth as silk. The world was lovely, not to worry and all these kinds of wonderful things.

Mr. Ballinger: Remember Bill 30.

Mr. Cureatz: I should have spoken up a little sooner. Those were in the last final days of the Tory party swinging in the wind. Then he left us high and dry with that one. Dianne Cunningham is much more knowledgeable about it than I am. She was there on the other side.

Mr. Chairman: Mr. Cureatz, could I just get some sort of a handle? Your colleague has an amendment which, after reviewing it, I am satisfied that it stands independent of the amendment of the New Democratic Party. I would hope that your speech now is perhaps—

Mr. Cureatz: Winding up. Okay, it is.

Mr. Chairman: —going to apply to the motion of your colleague.

Mr. Cureatz: I want to ask the minister a question. I cannot ask the Premier. I could ask the Premier, but he is not here either. Someone will ask the Premier. I want to ask the minister, why did she state on August 2, notwithstanding that the public hearings were in session, that the municipal option is not negotiable? I would really like to ask her that and I am still going to ask her that time and time again. I say to the member for Durham York (Mr. Ballinger) I am going to be waving these pieces of paper from now until, I think, after Christmas the way this seems to be unfolding; all of which I do not necessarily have much say in what is taking place, but we all know who does.

Mr. Ballinger: That is fine. It is because you have no other agenda.

Mr. Cureatz: I would also like to ask, did you really want assistance on the improvement of the present reference to tourism, in spite of

the fact that the present legislation has been upheld in the courts? These are two nice little questions I would like to ask her. Of course, I know the answer. She will sit there nicely. She will probably fumble in her own little congenial way, which I have nothing but the greatest respect for, and she will come out with something which will not even be close. It will be like the vice-presidential debates last night, which I missed because Michael Wilson was in the riding opening up a new campaign office for our candidate.

Mr. Ballinger: Oh, you mean the defeated provincial candidate.

Mr. Cureatz: It shows you how much my wife is attuned to politics; that is why she brings me back to reality. I said, "Kathy, I am going to be late." She said: "What else is new? Why don't you tell me when you will be early and bring some news to me at home."

I said, "Michael Wilson is going to be in town." She said: "Oh, that's great. Who's he?" I said, "Honey, you know he is the Minister of Finance in Ottawa." "He is just another jerk politician," she said, "just like the rest of you."

She really brings it home to me in terms of sometimes the frustration that she has seeing what is going on and the frustration that I have seeing what is going on, not only with the local option. That is why I am supporting my colleague's proposed amendment.

Mr. Chairman: You are not supporting your colleague's amendment?

Mr. Cureatz: That is who I am supporting.

Mr. Chairman: You did not say that. You said you were supporting your NDP colleague's amendment.

Mr. Cureatz: Oh, I see. We have not even got to my colleague's amendment yet.

Mr. Chairman: You may find those words will come back to haunt you.

Mr. Cureatz: The event will have to be a repeat performance when we get to her proposed amendment. You have lost my train of thought, but I still have it, and that is back to the frustration.

Mr. Ballinger: How many people were there last night?

Mr. Cureatz: Actually, I didn't make it—too late.

Mr. Ballinger: How many people were there?

Mr. Cureatz: I think 50 or 60.

Mr. Ballinger: Ah, I love it.

Mr. Cureatz: That is why I am expressing my concerns for the Liberal backbenchers and their frustrations at the minister and then none other than the Premier coming out—I am trying as best as I can to make it interesting.

Mr. Ballinger: Michael Wilson only drew 50 or 60?

Mr. Cureatz: A little smile now and again would give me some encouragement. Jeepers.

Mr. Ballinger: Michael Wilson only drew 50 or 60.

Mr. Cureatz: I do not know. I was not there.

This is my conclusion with regard to section 4. Do you know what happened? I could not believe it. It just shows you the sort of uniqueness of this process. We were in Peterborough debating the local option, and that is why we are supporting section 4. Where is this?

Mr. Hampton: I thought you were good for another half an hour.

Mr. Cureatz: No, I got the word, five minutes. Do you know what happened in Peterborough after all the people came forward—

Mr. Ballinger: Dianne wants to speak to the motion.

Mr. Cureatz: I said this briefly the other day but then we adjourned the committee. How I wish the minister was here, but not to worry. You tell her that I will in be full flight another day.

Mrs. Cunningham: She will be here.

Mr. Ballinger: Trust us. We are with the government.

Mr. Cureatz: Meg Milne, staff writer of the Peterborough Examiner said—I am sure glad I bought this—"Queen's Park won't change Sunday shopping stand: Smith." We had all these hearings all day. Let me see where we were before Peterborough? We were in Collingwood, Orillia and Ottawa. Hey, we had a nice little party in Kingston, of which I am really supportive and appreciative of that birthday cake. Then in Peterborough, what happens the next day? Meg phones up the Solicitor General. She has more success with the Solicitor General than any of you people or any of us. We are just the elected representatives. What kind of acknowledgement does the minister of the crown give to us? Zippo.

Meg called up from the Peterborough Examiner and said, "Hey, Joan, it's Meg from the Peterborough Examiner." Can you see a little cub reporter on the telephone, the typewriter going and sort, however the cub reporters dress? I have not noticed much. "Oh," says Joan, "hello, Meg."

"Hey, listen, this committee is just up here in Peterborough. We want to know, what do you think, Madam Minister, about local Sunday options?" Do you know what she said? I could not believe it. Here is what she said. The Solicitor General said in a telephone interview from Toronto: "The so-called local option will stay in the bill. It is the essence of the bill." This is back on Thursday, August 25.

Mr. Ballinger: How many times do you have to be told that. You have been told that all summer.

Mr. Cureatz: Well, you should not have been congealing the witnesses as they came in time and time again and letting them think—I say to Shirley, the member for Wentworth East (Ms. Collins), who seems to be a very reasonable person, as much as I am trying to control my anger to Mr. Ballinger—

Mr. Ballinger: Look out. She will be after your phone number next.

Mr. Cureatz: He was congealing the witnesses, thinking that they were actually having some impact. They actually thought they were doing something worth while. Every time even I sort of felt half-decent about the process, after I had a nice lunch, with a dinner at the restaurant overlooking the harbour. Remember? That cost me a bundle, I just got the cheque back, but it was worth while. Don't worry. It is okay.

You know what? I could not believe that the minister—

Mrs. Cunningham: I paid. You made me pay.

Mr. Cureatz: That is true. I did.

Ms. Hart: Dianne, me too.

Ms. Collins: Nice way to go, Christine.

Mr. Chairman: Can we discuss your black book afterwards, Mr. Cureatz? Perhaps we can get on with the motion.

Mr. Cureatz: I could not believe the minister. It just reminded me of the old days when I was in your position and I let some of those ministers get away with it. I sat there because you are hoping for manna from heaven and the Premier will call you when there is a cabinet shuffle. You did all the right things. Nonsense. I told you it does not happen that way. You need leverage. You need big bucks behind you, who are supporting the overall party and you and your riding. If you think by just being Goody Two-shoes in this committee or as a caucus member that you are going to make it, forget it; it does not happen that way. That is the old, sad story. You tell the truth and they do not listen to you. Mark my words, if you are all lucky enough to make it another term and other term after that—

Mr. Ballinger: You said only two were coming back; now we are all coming back.

Mr. Cureatz: —and you are still back there, you will be thinking about good old Sam's comments. What will really make you angry, and what makes me angry, is that I did not stand up early enough. That is why some of you should be giving consideration to section 4.

There are some issues that will stand out in terms of highlights of the legislative program, and this is going to be one of them. There is the reality. Dianne comes on strong about winning her by-election on it and I think she did. Whether it will have a big impact in the next election, who knows? Three years down the road, it may be forgotten, I do not know. I cannot look in the crystal ball, as the the member for Durham-York says.

Mr. Ballinger: You guys might be extinct next time.

Mr. Cureatz: The way our finances are going, I would not be surprised, but not this kid, because I have a few bucks in the bank, so I will still be there.

You are doing nothing. It is going to hurt you and you are going to pay for it. I can hardly wait until the minister comes back because I am going to be asking her again, at least about her two statements. We will have another shot at the Premier during question period and we will have some fun about it, about interfering in the process, talking about the local option, congealing the witnesses for those two months as we travelled across the province, actually leading them to believe that they were having some say when all along they had no say whatsoever.

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I want to know why did she hamstring the committee at such an early stage about the local option? I want to know why you Liberals will not give some consideration to supporting this section 4 because, mark my words, what did the former mayor of Uxbridge use to say, which I have used from time to time? "What goes around, comes around." I have been using that.

Mr. Ballinger: Comes around.

Mr. Cureatz: I have using that. I like that, actually.

Mr. Ballinger: It works.

Mr. Cureatz: Yes, it works.

Mr. Ballinger: Except in your case.

Mr. Cureatz: There is an exception to every rule.

This one is going to be coming around for a lot of you when you are knocking on those little doors in 1991. With those few comments, I would ask you to give serious consideration to supporting my colleague's amendment.

[Applause]

Mr. Chairman: Which colleague are you talking about?

Mr. Ballinger: Whatever you do, do not yell for an encore.

Mr. Chairman: Applause is out of order.

Mr. Cureatz, I am curious. You have indicated that you are supporting your colleague's amendment.

Mr. Cureatz: My opposition colleague.

Mr. Chairman: I should draw to your attention the fact that your colleague, Mrs. Cunningham, has an amendment that will be before us. I will just give you a peak behind the veil. I am going to rule that it is independent and stands alone from Mr. Philip's.

Mr. Cureatz: I see. We appreciate that very much.

Mr. Chairman: You are going to look rather inconsistent if you support both. I just thought I would give you that little hint.

Mr. Cureatz: Watch me.

Mrs. Cunningham: I have a point of order. I appreciate your ruling. That means in the procedure here that Mr. Philip will be the last speaker to his motion. Is that correct? Is that what is going to happen now?

Mr. Chairman: The rules allow endless debate, but if we can have unanimous consent that he be the last speaker, I would be prepared to entertain that.

Mrs. Cunningham: No, that was not the intent. I was looking for a process here. Otherwise, anyone can continue to speak to this motion. Is that correct?

Mr. Chairman: That is right.

Mrs. Cunningham: I could speak again if I wanted to?

Mr. Chairman: If you want to, but I would also indicate to you that as long as we are speaking on this and not voting on it, your motion has not been tabled. It will be next.

Mrs. Cunningham: That is fine.

Mr. Philip: That is not a point of order.

Mr. Chairman: That is really not a point of order.

Mrs. Cunningham: I do not know what to call it.

Mr. Chairman: It is a point of information, which does not exist, but go ahead.

Mrs. Cunningham: I have some tremendous concerns right now about what is not happening here. My colleague Mr. Cureatz referred to the Solicitor General not being here. I am really disturbed by that for a couple of reasons.

In the very beginning when we were looking at the process of this committee, the Solicitor General stated she would be here, not perhaps during the public hearings but certainly at the end. I did not go around the province and do this kind of work to come back here and make amendments that we have literally put hours into. We spent the whole summer on this stuff.

I am serious about making some change and I think the least the Solicitor General can do is give us the courtesy to listen to the amendments that the opposition are putting forth, based on a lot of input from the public. She has stated she would do that, "We can discuss that at the time." When asked, "Will you be here for the hearings?" she replied: "I am available to the committee. I wish to be most co-operative with the committee. You may want at that time just to have me in the background since Ron will have done all the work, or you may wish my attendance at some or all of it. I assure you I want to co-operate with the committee."

I am asking, Mr. Chairman. I do not want to proceed until the Solicitor General is here. I have worked too hard. She is one of my colleagues from London. I know she would want to be here. I do not know why she is not here. If she has another meeting, fine, I will wait, but I do not want to proceed without her attendance. I think it is absolute courtesy and I do not see how she could proceed with her own ideas without listening. The arguments we will be putting forth today, as Mr. Philip put forth yesterday, are new arguments.

Mr. Ballinger: They are?

Mrs. Cunningham: I have just tabled an amendment that is new.

Mr. Ballinger: It does not look new to me.

Mrs. Cunningham: Good for you. You have a crystal ball that no one else has, I will tell you. It may not be new to you. You probably wish to put it forth yourself and you cannot.

Mr. Chairman: Your point has been made. Perhaps the parliamentary assistant could—

Mrs. Cunningham: I am very serious about it. In fact, I would even consider leaving. I am just paranoid.

Mr. Chairman: Consider the comments that were made by the minister. She did indicate she would make herself available. If Mrs. Cunningham wishes to have her available, I think she should be available.

Mr. Kanter: I would just reiterate—and I am not sure if Mrs. Cunningham was here when I made my initial comments—that the minister is involved with ministry business this morning. She asked me to advise her when her presence would be useful in helping the committee proceed and I advised the minister we might be on the New Democratic Party motion for some period of time. The minister did make comments on the NDP motion yesterday and does not have any to add on that particular motion. When the committee proceeds to a new amendment, I will advise her of that fact.

Mr. Philip: I find that offensive. She has made comments. Some of those comments are in fact misleading. I want the right to question her on those misleading statements, particularly about how she has failed to consult the municipalities. I want her here to answer those questions.

Mr. Chairman: We were on a point of order.

Mr. Philip: That is the point of order.

Mr. Chairman: Mrs. Cunningham, I do not believe that is a point of order.

Mr. Philip: My point of order is that I move adjournment until the minister presents herself.

Mr. Chairman: All right. There is a motion for adjournment. It is not debatable.

Those in favour of adjourning?

Those opposed?

Motion negatived.

Mr. Chairman: We continue to sit.

Mr. Cureatz: You can listen to me some more.

Mr. Chairman: Mrs. Cunningham, you raised a point of order. It is not a point of order. However, as you are a new member, I felt it was fair to hear you. We have heard you and you have heard what Mr. Kanter has said. I think that sounds reasonable, that when your amendment comes forward he will have her here.

Mrs. Cunningham: I have to agree with Mr. Philip. I think that is offensive. He is making his arguments based on what has been stated right now, and Mrs. Smith did make some comments yesterday that he has not had a chance to question her on. I find it offensive. I do not think that is what she would want at all.

Mr. Chairman: Mrs. Smith will be here on other occasions. She will be here during the course of your amendment. I am sure Mr. Philip will find an opportunity to ask questions at that time.

Mr. Ballinger: Go ahead, Ed, give a press conference. Ed is going out to give a press conference.

Mr. Chairman: Mr. Philip, you are up.

Interjection.

Mr. Chairman: I do not have Mr. Hampton on the list. I have Mr. Philip. Is he replacing you, Mr. Philip?

Mr. Philip: No, he is a member of the committee.

Mr. Chairman: I realize that. You have to go on the list. Mr. Philip is waiving in favour of you, is he? All right.

Mr. Philip: I am not waiving. I am on the list. He is simply next on the list and probably will be the last to speak on this motion.

Mr. Chairman: I do not know whether that was agreed to. That was not agreed to. But you were next on the list. All right.

Mr. Ballinger: Who made that agreement?

Mr. Chairman: I will take it you are moving Mr. Hampton into your place and you will follow him. Mr. Hampton.

Mr. Hampton: I gather I missed a fair amount of fireworks here yesterday.

Mr. Kanter: No.

Mr. Chairman: It was actually a pretty calm day. We had many positive movements.

Mr. Hampton: I see. Depending on whose perspective you are watching it from, I would think.

I want to speak to Mr. Philip's motion. I also want to say something about the process we have gone through, because I think the process we have gone through is a pretty important one, yet in retrospect I do not think it was treated as if it were important.

I thought that when this committee was set up, we were supposed to listen to what people had to say. That is why we toured so many communities, that is why so much money went into our travels and that is why so much money went into advertising the fact that we were conducting hearings. I thought we were supposed to go out there and talk to the people of Ontario and ask them what they wanted, what they thought about this bill, what they thought about the possible repercussions of this bill, what they thought about where it might take us and what that might mean for them.

I also used to think that in our kind of society, in a democratic society, you are supposed to listen to elected bodies. The bodies that are elected have, if not authority, at least some element of representativeness, some element of legitimacy, and we, as a committee, are supposed to listen to elected bodies, so when we come to a city council, a metropolitan council or something like the Northwestern Ontario Municipal Association or the Association of Municipalities of Ontario, all elected bodies, we are to listen to them.

The second thing I thought I had learned is that you are not supposed to cast aspersions on those groups. You are not supposed to refer to them as unreal people despite the fact they are elected in popular elections, many of them by sizeable majorities and many of them by much more sizeable majorities than any of us will ever approach. You are not to somehow denigrate the process or denigrate their position or their legitimacy.

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I also used to think, when you are dealing with other bodies that have some claim to be representative bodies, whether they be church groups, trade unions or community groups, that in our society you are also supposed to listen to those groups because of their democratic nature, because they are elected, because they are seen in our everyday society as having some kind of legitimacy by the press and the communities they come from.

You are supposed to listen to them because I had always thought that was part of the basic framework of democracy, because we believe that system works, because we believe that system is the best system, even though sometimes it is a little imperfect.

I always believed that was the case, and again, that you were not supposed to cast aspersions on them, or to refer to their ideas as being semirational or to refer to them as people dealing in myths, as being misguided or as being misinformed or misinforming or misleading.

I thought that all those things were not supposed to take place in our kind of society and in the kind of system we have. I thought the whole process we were involved in was to recognize that these groups represent some legitimate views and that our job was to wrestle with those views, to question them, to analyse them, and to try to find out where there were inconsistencies and contradictions. I thought that was our job.

I did not think it was our job to basically ignore a lot of those people, or again, as I say, to refer to them as being unreal people, or to refer to them as dealing in myths or refer to them as being misguided or somehow to cast aspersions on their very legitimacy.

Now that we have come to almost the end of this, I have to say I am really disappointed.

Mr. Ballinger: Oh, come on, Howie.

Mr. Hampton: I am really disappointed.

Mr. Chairman: Let the person who has the floor—

Mr. Ballinger: Let's be realistic about the process.

Mr. Chairman: The realism of the process is that interjections are out of order and the more interjections that are made, the greater it fuels the process. There will be no further interjections. They are out of order.

Mr. Hampton: What I find really so offensive about this is that I remember the first day we started this. The minister came in and basically said there was no legitimacy to anyone who doubted the government's position, that anyone who had a contrary view, that anyone who questioned the way the so-called local option was being marketed—I say it was being marketed because that was what was happening—and that anyone who had any questions about that was, in the minister's words, either misinformed, misguided or dealing in myths.

I remember how insulted I felt and I remember when I went back to my office that afternoon and fielded a couple of calls from my constituency how awful I felt for some of the other people, people who I think have a great deal of legitimacy in our society, people like the United Church minister in many of the communities, United Church ministers who came before this committee, and people like the Catholic Women's League of Canada. Somehow I found it really difficult to swallow that they were all misguided, that they were all misinformed, that they were all dealing in myths.

The second thing I found that was really difficult to deal with was that while we are holding the hearings, while we were out there, every day we would have deputations come before us and the chairman would say, "We are here to listen to you," and someone from the Liberal side would say, "Yes, we are here to listen to you and we intend to take your suggestions seriously."

While we are doing that, the Solicitor General and in some cases the Premier, while touring the province, were saying if not exactly the opposite, something very close to it, that no matter what the committee said there were things in this bill that would not be changed, that no matter how strong the opposition, no matter how resourceful the criticism and no matter how searching the analysis from deputations that appeared before this committee, it was not going to change. That was equally disturbing.

As I say, we have come almost to the end of the process. Like, I think, many members, I did a summary of what some of the witnesses who appeared before the committee said to us and I found that what the majority of the people who came before the committee said to us was pure and simple. I can say that an overwhelming majority of them said: "No, we didn't have a great problem with the existing Retail Business Holidays Act. We didn't have a great problem with it at all. We found generally that it was workable. We found that if the government had only enforced it more rigorously, that might have made it a little easier. We found that if the government had cleaned up some of the penalty sections, that would have helped. We found that if the government was a little more rigorous in talking to us and asking us for our opinion, that would have helped."

An overwhelming majority of the groups that came before this committee said to us very clearly that they thought the exemption for tourism had worked well and could continue to work well. They felt that if we refined that and spelled it out a little more clearly in the bill, that would certainly be an appropriate thing to do.

That is why we have put the amendment that is now before the committee. We think that is an essential part of the bill and that it ought to be an essential part of the bill, to simply say that any opting out or any use of a local option ought to be specifically for a situation where "it is essential for the maintenance or development of a tourist industry or cultural industry in the municipality; or if the establishments provide essential services to the municipality." That spells a few things out fairly specifically.

I think what we have to look at is what so many of the groups and organizations—I should say legitimate groups and organizations, because I think they are legitimate. At least they attempt to run by some sort of democratic process. At least they elect executives. They are in touch with their local communities. They perform some sort of recognized and legitimate function in their communities.

I think we ought to listen to what those legitimate organizations were saying, specifically about the impact, or what they felt the impact would be of the government's unamended bill. They said over and over again: "Look, don't tell us this is just a local option, just like the old tourism local option. Don't tell us it is the same thing. Don't tell us you are simply revamping that option a little bit and giving it some new wings, because it is qualitatively different." The so-called local option the government has presented, from the perspective of so many of those groups, in their view is aimed at and will very quickly result in wide-open Sunday shopping.

I think so many of those groups hit it right on when they said, "If you want wide-open Sunday shopping, if that's what you want, why don't you come right out and say it so we can have a good debate about it? Why are you trying to do it through the back door?" It is obvious this bill is not fooling anybody. It is obvious from all of the people we talked to that they recognize what competitive business pressure does in terms of a retail shopping environment and in terms of a retail working environment.

How can we ignore what downtown business associations from all across the province told us? How can we ignore what hardware store owners told us. How can we ignore what Canadian Tire store owners told us? How can we ignore what the largest retail sector union told us? How can we ignore what small business person after small business person told us?

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How can we say they have no expertise in this, despite the fact they spend their lives in this? How can the government, despite offering very little evidence in the way of studies, despite offering very little evidence in terms of what has taken place in other provinces, namely, British Columbia, Alberta, Nova Scotia and New Brunswick, and despite the government members' reluctance and opposition to even go to those provinces to see what has happened there, claim to have all this expertise in this area and ignore so many of those people who came to his committee in good faith?

I put emphasis on the term "good faith." How can we ignore their good faith representations to this committee? The overwhelming opinion was that

people do not want this local option. They do not want it spruced down; they do not want it spruced up. They do not want it.

The people who came to this committee and said that, I say again, all have unquestionable legitimacy behind them. They are representative groups from different communities all across the province. They are the kinds of groups and organizations that I think you can say make this province run. They are the heart and soul of so many of those communities. They are the heart and soul of our political system. They are the kinds of organizations that allow us to build consensus. They are the kinds of organizations that allow us to overcome conflicts in a civil way. Yet now we are going to ignore them.

We are going to ignore them, and I will say this, essentially because the Liberal Party wants off the hook on a difficult issue.

There is no doubt that this is not a easy issue. There is no doubt, as the retail car dealers' association came to us and said, that time and time again there are people in this province who are in business who will use any possible advantage to get one up on their competitors. That is how they see their business being successful. That is how they see themselves as getting along. We were told that in a variety of forms, from a variety of groups. Now I do not think we can ignore the legitimacy of those organizations. I do not think we can ignore what they have to say, merely to get the Liberal Party and the Liberal government off the hook on a difficult issue. I want to say that I do not think your bill is going to get you off the hook in any case. I do not think it is going to do it.

When I talk to the municipalities in my constituency and when I talk to other municipalities, time and time again you have councillors saying, "We don't want to be approached at every council meeting by another organization that wants a special exemption." As much as that kind of heat can be brought to bear on the province, much more heat can be brought on a local municipality; much more heat. "We don't want every merchant in our community, we don't want every potential developer in our community coming to us and saying: 'Gee, won't you bring in the local option for me? Can't you use it for me?'"

There is so much more here, and I think so many of the groups tried to say it for us, than just a convenience of shopping. There is so much more. What we are talking about is the way a lot of people live their lives. We are talking about legislation that will regulate when they have to work and how long they have to work, whether working is convenient for them or not convenient for them, whether it interferes with their family or does not interfere with their family, whether it is good for their business or not good for their business. All of those things are going to be touched. We are dealing with a piece of labour law that is essential to how this province runs and that will have widespread effects on the way people live their lives and upon the way people will work.

Yet we are going to say that is so unimportant that it can be thrown out there and we can have a thousand different ways across the province for it to function, that there is no need for any cohesion or unity across the province, that there is no merit in having any cohesion or unity across the province.

Let's take that argument one step further and let's apply it to the environment, for example. If you want to have a local option in terms of this kind of labour law, it is not a big step further to say, "Let's have a local option in terms of the environment," if Canadian Pacific forest products wants

to go to Marathon and say, "If you will just lower your environmental standards a little, we will build a paper mill here," or: "We will build a chemical factory here. We understand some of the people down south are a little disturbed about the environment now because they have polluted it to such an extent, but yours is relatively pristine. Just lower your environmental standards a little and we will build something here."

That is essentially what you are doing. You are saying that an important part of the fabric of Ontario, an important part of the fabric of our communities, is not worthy of some kind of consistent law. Therefore, you are going to throw it open to the dictates of the marketplace. That is what you are doing.

Municipality after municipality has come before us, and trade union groups and business groups, and I think they have essentially all said the same thing: what the local option actually is is deregulation, throwing the whole system open to the free marketplace: "Let the free marketplace decide. Let's go back to Milton Friedman. Let's go back to lots of laissez-faire. Let the free marketplace decide who is going to open, who is going to have to work the long hours, who is going to work the inconvenient hours, who is going to work whether he wants it or not, who is going to have to open his business whether he wants to or not. Let's do away with all that regulation. Let's just throw it open to business competitive market pressures and let the market pressures decide what is going to happen."

If you are going to do it with this kind of labour law, if you are going to do it with this kind of social policy, it is not a big step to do it with the environment. It is not a big step to do it with any of those things: "Let the market decide who stays open. Let the market decide where the chemical plants are located. Let the market decide where the metal-plating plants are located. Let the market decide where the really sour paper mills are located and where they are going to pollute." That is really what we are doing here.

After hearing so many people across Ontario, so many legitimate groups, so many representative groups, so many elected bodies tell us that this is headed down the wrong trail, I do not think it will happen overnight, but three or five or 10 years later, as the priest from Sudbury said so very well, one morning we are going to wake up and look at the situation and we are going to say, "Jesus, this is a mess."

Mr. Ballinger: He's not going to say that. He might have said "jeepers."

Mr. Hart: "Golly."

Mr. Ballinger: "Golly." "Holy shucks."

Mr. Hampton: Maybe that is not what he said. Maybe he did say: "Jeez, how did we get here? How did we get into such a mess?"

We are going to look back and we are going to say: "Well, we did it incrementally, but this was one of the big steps. This was one of the big incremental steps. This was one of the places where we really lost it. This is one of the places where we really neglected our duty, where we really threw it down the drain." I can only say again that I think we have done the people of Ontario a real disservice. I think we have done Ontario as a whole a real disservice by not listening more.

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That is specifically why we have offered this amendment. We believe this amendment speaks to and addresses the integrity of so many of those elected bodies, those legitimate representative bodies, those legitimate community and church groups and social organizations that came before this committee and said, "Look, you are headed down the wrong road." Whether this bill is a disaster by itself is not the issue. The fact of the matter is that the essence of this bill is going in the wrong direction. It is not where we want to go. It is not the kind of thing we want to have in Ontario.

If we went out there and held another six months of hearings, as we have proposed, and we offered people a framework saying: "Is there some way we can reduce Sunday hours? Is there some way we can even reduce Sunday hours for those people who work in essential services? Is there some way we can reduce Sunday hours for those people who have to work in industries that cannot shut down on Sunday?" I am willing to bet we would have overwhelming approval.

I know in my community—we heard it again in Sudbury and other places—you have a continuous process with pulp mill and paper mill. People have to work. You cannot shut the place down. If you did shut it down, it would take you the whole week to get it running again.

Mr. Ballinger: What about quality of life? Breakup of the family?

Mr. Hampton: If we asked the people who work in those paper mills, "Since you have to work on some Sundays, would you rather work, say, a six-hour shift than an eight-hour shift?" overwhelmingly I know what the answer would be; the answer would be, "Amen, yes."

Mr. Ballinger: That is like asking them whether they would rather make \$4 than \$2. The answer is obviously going to be yes.

Mr. Hampton: Usually, I do not respond to Mr. Ballinger's attempts at heckling, but this time, since he has attempted to make some sort of valid point, I will. I just want to bring him up to date on a few things.

Mr. Ballinger: Thank you. I appreciate that.

Mr. Hampton: If you go to the paper mills in Ontario—it is something I think I know a fair bit about—you will not find any of the office staff or senior management working. You will also find a skeleton crew in terms of supervision and you will not find any of the maintenance staff working, none of the electricians, the machinists, the instrument mechanics, the millwrights, the pipefitters, none of them. The only people you will find is a skeleton crew of production workers, those people who are essential to continue the running of the continuous process machinery.

That is also true in places like Sudbury, Red Lake or even Hemlo where you have the large-scale mining industry. Even in those communities where it is considered essential for the economic health and wellbeing of the particular industry, you do not find any of the senior office staff in there on Sunday. You find a skeleton crew of supervisors. You find a skeleton crew even of production workers, and you do not find any of the maintenance people; none of them. That is the accepted process in those industries.

We heard a few times about the contracts the Canadian Auto Workers have bargained with 3M in London. There is a reason for that contract and part of the reason is that a lot of people do not want to work Sundays.

Mr. Ballinger: I just thought you were running out of ideas and I was trying to help you.

Mr. Hampton: Madam Chairman, maybe you can tell Mr. Ballinger that while I recognize he does have some ideas, I will not be borrowing any of his ideas. Since he is a member of your caucus, maybe you can—

The Vice-Chairman: Mr. Ballinger's interjections are out of order.

Mr. Hampton: If there is any borrowing of ideas between your organization and mine, historically, I think it has been a case of when you think it is politically popular, you borrow our ideas, just to give you a little to think about.

Mr. Ballinger: You do not have to be personal about it, for crying out loud.

Mr. Hampton: Despite Mr. Ballinger's attempt to distract me from what I wanted to talk about, I will get back on track and get to the point of the matter. The point is that this bill is going in the opposite direction to that of many of the social organizations, the labour organizations and the business organizations in this province. They do not want free market chaos on Sundays. They do not want competitive business pressures dictating when they can see their families, how long they have to work, how long they have to stay open or what they have to do in terms of finding day care. They do not want that.

They are saying: "It's okay if the free market operates Monday to Saturday; that is fine. But we don't want the free market dominating Sunday too. The free market can get stuffed for a day." That is what they are saying, and I think very much that we are acting at the peril of the province in ignoring them. I say again that we are acting contrary to the interests of the majority of the people of this province.

I have to comment on one of the last witnesses we heard because I was saddened by what I heard and by the reaction of some of the Liberal members. One of the last witnesses we heard came in and said essentially: "I'm a professional person. I'm a very busy person and because I am a very busy person, I think the stores should be open whenever I want them to be open. I think they should be there to cater to my every whim." If I can say it again, it was to the effect of this witness saying, "I believe in absolute freedom."

She was very careful to stay away from the fact, and I questioned her on this, that what is freedom for some people can be an absolute lack of freedom for other people. She was very careful to stay away from that. Do you know what was so sad? It was to see some of the faces on the Liberal side of this committee smirking, as if to say, "Way to go, way to give it to them."

I remember passing a little note to one of my colleagues, who shall remain nameless. I said in the note, "This sounds like the ultimate Liberal dream, a luxury class of urban professional yuppies who want an underclass of service workers to cater to their every whim." I wrote on it, "Some dream, some vision for Ontario."

I will not put down what the response was because the response from the colleague, and it was not a colleague from my party or from the Progressive Conservative Party, indicated that there was some legitimacy in my point of view and a lot of sympathy for what I was saying.

Mr. Ballinger: Maybe he was trying to humour you.

Mr. Hampton: No, I think that in the note that came back there was almost an element that said, "I agree and I am saddened by this as well." I was let down when I saw the response from my Liberal colleagues to that witness, because that is essentially what the witness was saying. When I said, "If your freedom means that some people have to be coerced by the market into coming in to work on Sunday, what about their freedom?" the witness's response was, "They should choose whether they want to work or not."

When I said: "What about the fact that a very large number of the people who work in the retail sector are single mothers who have to find child care on Sundays? What about their freedom?" the witness' response—I think I can quote her again—was, "They should choose whether they want to work or not."

When I go back to the most simplistic statements Milton Friedman has ever made about the free market, even he would not say something like that. Yet I saw members of the Liberal caucus smirking as if to say: "Way to go. Give it to him. Tell it the way it is."

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Mr. Philip: Adam Smith Liberalism.

Mr. Hampton: It was worse than Adam Smith Liberalism.

Mr. Ballinger: Ed, you're back. Have you got all your press conferences done?

Mr. Philip: Yes. You gave me a great issue this morning.

Mr. Hampton: When we contrast what some of those church groups, community groups, small business associations, trade unions and municipal politicians said with what that witness said, I think we do get two different perspectives of Ontario. I have to say I am much more in agreement—and I think we should all be much more in agreement—with the perspective that so many of those legitimate groups brought to us.

I think we should all stand back and take a very careful look at the kind of Ontario that particular witness advocates who calls for absolute laissez-faire—or at least absolute laissez-faire on Sundays—if it is convenient for her, if it is convenient for her freedom. We should all take a very careful look at what she is advocating.

To get back again to where we started, it seems to me that many of the groups, an overwhelming number of the groups, said to us, "Look, you can dress up this bill all you want—you can put all kinds of fancy wings on it; you can put a few fancy exception clauses in it—but the essence of this bill is that it is headed down the wrong road." Ten years down the road, or five years or three years, depending upon whom we heard from, it is going to lead us into a situation that we do not want and that we do not like. We are going to stand back from it and say: "How did we get into this mess? How did we screw it up so badly that this is where we are today?"

Actually, I am glad that the witness who appeared here on the second last day last week did come. She spent an awful lot of time talking about freedom. Ask people who work in the retail sector; ask some small business people; ask the clerks who work in the hardware stores, the department stores,

the Canadian Tire stores, the supermarkets. In terms of the work they do, the predictability of their hours, the predictability of their pay, the predictability of their profits and the predictability of the business environment they have to operate in, they have only achieved that kind of predictability, they have only achieved some kind of security and freedom because we have regulated that market. We placed some fairly wide and overarching restrictions on the Sunday retail market. That is the only way they have really achieved any kind of meaningful freedom and security in their lives. I think that is what they said to us over and over again.

What this bill is going to do is essentially deregulate that again. If you can get enough business pressure in a community, if you can get a couple of developers who have enough money to throw around and can put enough pressure on council, then the regulations get swept aside. What gets put there in place of the regulation is whatever the market will bear. Whatever will sell, whenever it will sell, however long it will sell for—that is when people will work, that is how long they will work for and that is how they will have to organize their lives.

If you look at it from that perspective, that really is a loss of freedom for a lot of people, it really is a loss of security for a lot of people and it really is a loss of predictability for an awful lot of people. That is what they are objecting to. That is what concerns them. It is not the commas of this bill, it is not the therefores and the howevers. It is not whether this clause has all the i's dotted and the t's crossed. They are not concerned about that.

They are concerned about what is essentially written between the lines in this legislation. What is essentially written between the lines in this legislation is: Let the market prevail. Whatever the market can generate in terms of competitive pressure, whatever the market can generate in terms of money, whatever the market can generate in terms of financial power that can be brought to bear on municipalities, whether they be local or regional, then let that rule the day. Let that have the final say.

As far as the convenience of families and their having a day off from the competitive market, as far as business people having a day when they do not feel compelled to go out there and sell, when they do not feel compelled to try to undercut their competition or match their competition, or deal with the bigger store that is down the street, in terms of workers being able to say, "I can plan some kind of a social function. I can plan a day off. I can plan a day of rest. I can plan an event or something with my family. I can plan it because I know there is some regulation of that day, there is some control over that day, in terms of what kinds of pressures I can expect," that kind of regulation, that kind of predictability, that kind of security, that kind of freedom is again being swept aside.

As I say, you can decorate this bill with as many different kinds of safeguards as you want. The fact of the matter is, though, I would expect the Liberal caucus is not going to propose that many safeguards because, I say it again, I think the essence of it is that whoever the shakers and movers are in the Liberal Party, they have decided that they want wide-open Sunday shopping, they want the competitive pressures of the free market to rule the day on Sunday.

So I do not expect we will see all kinds of safeguards from the Liberal caucus. But even if they were there, even if they were proposed and passed, they will not change the essence of this bill. The essence of this bill is

wrong, very wrong, because it is not going to increase people's freedom. It is not going to increase the quality of their lives. It is not going to protect the quality of their lives. It is going to do away with it.

Just as the process we have gone through—

The Vice-Chairman: Mr. Hampton, you are straying a long, long way away from the amendment. Perhaps you could confine yourself to that.

Mr. Hampton: With respect, Madam Chair, I think I am dealing with the essence of this amendment.

The Vice-Chairman: You keep referring to the bill, Mr. Hampton.

Mr. Hampton: I think I am dealing with the reasons why the amendment is there. I am dealing with how the amendment came to be. I think I am dealing with the legitimacy of the amendment, the kinds of groups who overwhelmingly came before this committee and presented to it, who gave good evidence of it, who gave statistical evidence, who gave evidence from every corner of the province, who gave evidence from every kind of elected body, representative body. I think, in speaking to that kind of legitimacy, I am providing the kind of legitimacy one would want for this kind of amendment. I simply point that out because I think it is important.

If only the government could point to some sort of legitimacy for its bill, would that not be excellent? I would say again that this bill is, for all of those reasons, headed down the wrong road and, again, what is so unfortunate is that in the process of this committee we have not listened to the people of Ontario. We spent two months and they came in good faith and they made their presentations and now we are going to ignore the essence of what they said.

1130

In the substance of this bill, I will say it again: I think we are out of tune with where we want to go as a society. I think we are out of tune in terms of the kind of society we want to have. I think we are going in the wrong direction, if we really are talking about people's freedom, if we really are talking about making a contribution to how people live.

I think, on all of those points, we are wrong and we are headed down the wrong direction. Again, to get back to the specifics of the amendment, time and time again groups came to us and said, "Look, if you want to make the existing legislation work, if you want to do something meaningful, then tighten up the meaning of tourism, tighten up the clauses dealing with tourism, tighten up those aspects dealing with the cultural industry."

That is what we have tried to do here. We have simply said that when you pass a local bylaw dealing with the development or maintenance of a tourism industry or a cultural industry in a municipality, it has to be essential for the maintenance or the development of those industries. It cannot be sort of tangentially related. It cannot be almost related. It has to be essential for them and has to speak to the essence of the local tourism industry or the local cultural industry.

We think that adds a lot and that speaks to what the people who appeared before this committee had to say. They do not want a local option that is essentially, "Let the free market prevail." They said that time and time

again. They do not want a local option that basically says, "Let the business pressures of the competitive market decide everything."

A cultural industry, yes, they recognize the legitimacy and that it may have some special needs; and a tourism industry, yes, they recognize that legitimacy, too. But what the government has proposed is something much more than just dressing up the old, local tourism option. The people of Ontario recognize that and they have said so, and they have said what they think the implications of the government's local option bill will be.

We feel very strongly that we should listen to what the people said, we should take their directions and we should amend the proposed bill as people have told us they want it amended. We should make the legislation do what people have told us it should do. That is why we have placed these amendments before the committee, Mr. Chairman.

Mr. Cureatz: Can I speak?

Mr. Chairman: No, Mr. Philip is next.

Mr. Ballinger: I was not sure whether you were going to come up for air or not.

Mr. Hampton: I was just getting warmed up.

Mr. Philip: Mr. Chairman, I was looking forward to questioning the minister on her statement, which was a statement attacking my motion. In my five terms as a member of this House, under large majority Conservative governments, I have never run into a situation where a minister has been so hidden from the public that the government is afraid to have her answer questions on an important bill.

That essentially is what Mr. Kanter was doing when he announced to this committee that the minister would not make herself present until this motion was dealt with.

Mr. Chairman: With due respect, Mr. Philip, I think Mr. Kanter's comment was that the minister had made her comments on your amendment and, going back to her original words, that Mr. Kanter would represent her in all aspects when she was not present.

Mr. Philip: I think that is what I have said. The minister has made her comments on my amendment and will not be available for questioning on those comments, so she can say whatever she wants without being accountable to answer questions on it. If that is not hiding the minister, I do not know what is.

Mr. Chairman: Let's get to the amendment. Let's not get into histrionics about what the minister did do or did not do. Just speak to the amendment.

Mr. Philip: I have a right to speak to the minister's behaviour. I have a right to say that I never had a Conservative cabinet minister do this in all the years I have been here. Certainly, Mr. Cureatz never did it, but then he was not a cabinet minister for very long. I cannot remember ever asking him a question, come to think of it.

Mr. Ballinger: What cabinet post did you get, Sam, after 15 years?

Mr. Cureatz: Nondescript. At least I got the "Honourable" in front of my name, William.

Ms. Hart: On a point of order, Mr. Chairman: I have not been here as long as Mr. Philip, but as parliamentary assistant I have personally taken bills through committee where the ministers were not there at all.

Mr. Philip: Ms. Hart obviously is a very poor listener or she would have heard me say I have never seen a major, important bill being taken through without the minister being present. The agreement was fairly clear.

Ms. Hart: You obviously do not listen.

Mr. Ballinger: Hear, hear.

Mr. Chairman: To begin with, I am going to rule this out of order. It is not a point of order. Would you get on with the amendment? Mr. Philip, clearly you have a right to speak as often as you want to the amendment. I am going to start restricting people—and you can criticize me if you like—to speaking to the amendment, to relevant statements with reference to the amendment.

Mr. Philip: Mr. Chairman, maybe you can clarify it. At the time when this committee was established, did not the opposition members agree that the minister would not be required to be present for the hearings, because we recognized that it was very onerous for her to be here and to be on the road the way we have been for all these hearings, and that we would accept Mr. Kanter, her parliamentary assistant, to speak for her, but that in clause-by-clause she would be here?

It is normal for the minister, on a major bill, to be present to answer questions. She wants to have it both ways. She wants to be here in order to make her statements and her comments, but not be here to answer questions on those statements.

Mr. Kanter: On a point of order, Mr. Chairman: Mr. Philip has made a statement about what is normal under parliamentary procedure. Unlike Mr. Philip, my experience in this House is quite limited, to about a year. However, in the other bill that I participated in at this committee, the car insurance bill, the bill to set up a tribunal to regulate the auto insurance industry, a fairly substantial bill, a bill on which there was a fairly substantial difference of opinion among the parties, the Honourable Robert Nixon, the minister, appeared and made an initial statement, period. That was it.

Mr. Chairman: That is not a point of order.

Mr. Kanter: I believe it is a point of order. Mr. Philip represented parliamentary procedure as being a certain style. I want to make it very clear that it is quite normal for this committee. That is the point I want to make. It is quite normal in this committee for the parliamentary assistant to carry a bill completely.

Mr. Chairman: Order. It is not a point of order.

Mr. Kanter: In this case, the minister appeared initially for a statement, the minister appeared subsequently at the beginning of clause-by-clause and the minister has undertaken to attempt to appear when we proceed, when we start making some progress.

Mr. Hampton: Is he in order or is he not?

Mr. Chairman: It is not a point of order. I did the same thing to Mr. Philip. I told him we were not discussing the point of order. If we are going to get any place in here and it is not just going to be a waste of time, we are going to have to abide by some rules of relevancy and so on.

I might add, Mr. Philip, that I have looked through the minutes of the proceedings and I cannot find anywhere where that undertaking or that direction was made. I would like to review the Hansard—it has been read here by Mrs. Cunningham—as to whether or not the minister did indicate that she would be here. Maybe we should clarify this now and for ever. My recollection of it was that the minister had indicated that for all purposes Mr. Kanter spoke for her. If you have questions as to why your amendment is not in agreement with the government, you do not really need the minister for that. You have Mr. Kanter.

I think we should clarify that point now. I am going to recess for five minutes. I want to see the Hansard and the undertakings.

Mr. Ballinger: That will just give Ed yet another opportunity to—

Mr. Chairman: I want to recess for five minutes; I want to see the Hansard. We will recess until 10 minutes to 12.

The committee recessed at 11:42 a.m.

11:48 a.m.

Mr. Chairman: The committee will reconvene. I am advised by the clerk that at the subcommittee meeting the only discussion was a change of dates to allow the minister to be available. There is no agreement as to her being here.

However, in the Hansard, copies of which have been distributed to you, the minister indicated that Mr. Kanter for all purposes spoke for her, that he was carrying the bill, and that she would be available and co-operative with the committee: "You may want, at that time, just to have me in the background; since Ron will have done all the work or you may wish my attendance at some or all of it." I do not interpret that as an undertaking.

However, there was no motion directing that the minister be in attendance for clause-by-clause. I leave it at that. I do not think there is any undertaking nor do I think there was any agreement nor was there any formal motion. However, I leave you with the words that she wants to be most co-operative and if you wish her attendance at some or all of it, she is available.

I think, Mr. Philip, you have made your statement. Let's get on with discussing the essence of the matter.

Mr. Philip: I simply want to put the point that she did say, "...you may wish to have my attendance at some or all of it." She also said, "I assure you that I want to co-operate with the committee." Now she seems to be indicating that when she comes in and makes a statement on an amendment, she does not have to stay back and defend that statement. I find that unfortunate. It is certainly something that Roy McMurtry would never have done as Solicitor General.

Mr. Cureatz: No, that's right.

Ms. Hart: Where's he?

Mr. Chairman: We can bring Roy back. He is available, I understand.

Mr. Cureatz: Well, we've asked him but he doesn't want to.

Mr. Philip: Roy never lost an election, and I think that may say something for him.

Mr. Kanter: He lost one to Margaret Campbell, I believe.

Mr. Chairman: If you would like to continue, Mr. Philip, you have the floor.

Mr. Philip: What this motion does—and Mr. Chiarelli does not understand what the existing legislation is or he would not be so misconceived about it. I do not know why I even bother answering Mr. Chiarelli's arguments. He always reminds me of Dickens's version of an undertaker.

1150

Mr. Cureatz: Now we're getting personal.

Mr. Chiarelli: You'd make a good twin, Ed.

Mr. Chairman: Let's get on with the amendment.

Mr. Philip: I saw him smiling. What happened?

Mrs. Cunningham: Oh, your face might crack Bob. Be careful.

Mr. Philip: We should mark it as a calendar date and have a cake or something. What this amendment does is it reflects the input that we had from all of the municipalities as we travelled around the province. Basically what they are saying and what they have said is: "Yes there are certain things under the present act which seem to work. Yes, we are willing to work with the minister and correct the present act if there are problems with the tourist exemption and if the minister will even name one of the problems or name one of the locations which she has failed to do. But we do want the right, in certain circumstances, for tourist reasons and for cultural reasons, to be able to regulate store hours. We do not want the kind of thing which the Liberal government is proposing and which we never asked for and which we were never consulted on, namely that any municipality can open up for any reason whatsoever. The reason we do not want it is that we know from our experience in British Columbia that rather than giving autonomy to municipalities it actually takes away freedom from municipalities because once one municipality opens the other municipalities are forced to do so whether their councils want it or not."

This amendment says, "Yes, we recognize that we live in a society that is different from 100 years ago; and yes, there are certain kinds of exemptions and yes, the present legislation is not perfect." Therefore you will notice that I have made a change in the amendment from the present act to be more inclusive, if you want, of the things we heard municipalities say they wanted and that they could cope with and that they could work with:

The Liberals may wish to deny what the local municipalities say, but you know there is a real contradiction here. The minister says on the one hand, that the the municipal councillors are the best people to understand local needs and yet across this province we heard from municipal councillors of every political stripe and from mayors of every political stripe and they all said: "Look, we do know what is best for us and we know what is best is the present act with certain changes. If you make these changes in the present act then we are going to go along with it and we are going to say, 'The government is great.' If there are certain problems in the present act then we will co-operate and we will work with you." That is the position of the Association of Municipalities of Ontario. That is the position of every councillor, I think, who came before us with no exceptions that I can think of and indeed, of mayors who appeared before us.

Even the groups that were most adamant against the principle of Sunday shopping said: "Yes the tourist exemption in most instances makes some sense." We have to redefine it. We need increased fines. We need a number of other things which the select committee on store hours proposed and which we will be moving as amendments to this bill and I believe the Conservative members have similar sorts of amendments or other amendments along the same lines. All I can say is that we have been out there and we have been listening to the public and if you go through the proposals, if you go through even the summary of the proposals that Susan has prepared in terms of amendments that have been proposed, you will see that this amendment reflects what the municipalities have been asking for. I do not think that is deniable. I do not think that Mr. Kanter, as a former municipal councillor—hearing him this morning he was so eloquent on municipal issues that I am sure that he will—

Mr. Cureatz: Yes, I think he should go back there.

Mr. Kanter: Perhaps your colleague, David Reville, would.

Mr. Cureatz: Oh, that is a good retort.

Mr. Kanter: You did not hear the show.

Mr. Cureatz: I did.

Mr. Philip: I thought that all three of you were quite good this morning and I thought it was a significant contrast to other occasions when I have heard one of you.

Mr. Cureatz: Not too many people were worried about the garbage dump coming in Durham East.

Mr. Ballinger: You never miss the opportunity to slip the knife in, do you?

Mr. Chairman: Mr. Philip, if you would continue as you were doing admirably up to that point discussing the amendment, we would not get into this interplay.

Mr. Philip: You notice that I never attack Mr. Ballinger because I think he is a fine fellow.

Mr. Cureatz: Here it comes.

Mr. Ballinger: Affable Ed.

Mr. Philip: I like Mr. Ballinger. He is a real fun guy and I am a real fun guy, as well, so we get along fine together.

Mr. Cureatz: A funster.

Mr. Kanter: I would say you are right on one of the two.

Mr. Chairman: Perhaps the fun guy would like to move adjournment of the debate seeing as how it is almost 12 o'clock.

Mr. Philip: Mr. Ballinger has a sense of humour and I think that is a redeemable quality notwithstanding all of his other faults.

Mr. Cureatz: But that is the only one he has.

Mr. Philip: His kids and wife are polite and when they come to my house they do not do anything in the pool that I would not want them to do in the pool, so I also have a certain—

Mr. Chairman: Mr. Philip, you are out of order.

Mr. Ballinger: Only out of respect for you, Ed.

Mr. Chairman: Get back to the amendment please.

Mr. Ballinger: Did you say it was lunch Mr. Chairman?

Mr. Chairman: Very shortly. It is feeding time.

Mr. Ballinger: We have the feed bag right here for Mr. Philip.

Mr. Philip: I think that my amendment, in fact, meets the criteria that were set out by the municipal councillors who came before us. I happen to have all of the municipal presentations by coincidence or by research I should say in this file folder. I could go through it one by one and review exactly what the councillors have said but I feel it is getting so close to the lunch hour that you might not appreciate that. I think I have made my case and I would be quite willing if you did recess, unless other members have any further comments, or unless the minister wishes to come forward—

Mr. Cureatz: Yes, let's hear from the minister.

Mr. Philip: —and allow me to question her on some of her outlandish statements against my motion, to have this perhaps voted on some time after lunch.

Mr. Chairman: We will recess then until two o'clock.

The committee recessed at 11:59 a.m.

11200
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-578

J-36b

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Thursday, October 6, 1988

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Ms. Poole

Collins, Shirley (Wentworth East L) for Mr. Keyes

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Smith, Hon. E. Joan, Solicitor General (London South L)

AFTERNOON SESSION

The committee resumed at 2:08 p.m. in committee room 2.

Mr. Chairman: I recognize a quorum. We will proceed. I gather we are ready to vote on Mr. Philip's motion. Would you like it read again or do you know what you are voting on?

Mr. Philip: I would like a recorded vote.

Mr. Chairman: Mr. Philip has requested a recorded vote.

The committee divided on Mr. Philip's motion, which was negatived on the following vote:

Ayes

Cunningham, Cureatz, Hampton, Philip.

Nays

Ballinger, Chiarelli, Collins, Hart, Kanter.

Ayes 4; nays 5.

Mr. Chairman: I understand the next amendment is from Mrs. Cunningham, to subsection 4(1).

Mr. Kanter: The minister is on her way over now. It is really in the hands of the committee whether Mrs. Cunningham wishes to proceed now or whether you wish to have a very brief adjournment. She is on her way.

Mrs. Cunningham: Very brief.

Mr. Chairman: Before we do that, I should indicate that when I looked at the amendment I had some concern about whether it was in order, but because Mrs. Cunningham had indicated to us this morning that she had put in such an amount of work in preparing it, I had the clerk check with Mr. DesRosiers this morning.

The reason I had concerns about it being in order is the fact that it requires the setting up of a Retail Business Holidays Exemption Board, and one could draw from that, if you look at that plus the companion amendments to sections 9 and 10, that there would be the expenditure of public moneys, which of course is a bill only a minister of the crown can introduce.

Mrs. Cunningham: I have been speaking to Mr. Ballinger, and he said if I really get in a tough spot, he just might—

Mr. Ballinger: I told you that quietly.

Interjections.

Mr. Chairman: I just felt, because of the time and effort—

Interjections.

Mr. Chairman: We are in the middle of a major decision here. Surely you can—

Interjections.

Mr. Chairman: The clerk says I cannot make it because of time and effort, but because of the time and effort I wanted to be certain that my concerns about the question of it being in order should be checked out with a higher authority. I checked it out. According to Mr. DesRosiers, even though it calls for the appointment of the board with three of the members being permanent and two of them being appointed by the Lieutenant Governor in Council, because there is no indication, it could be considered that these people are serving voluntarily without any need for honorarium.

I point out to you—and this is provided for in the rules in Erskine May—that if during the discussion it comes to light that these people are to be paid an honorarium, I will then have to consider the question of whether the motion is in order. I simply tell you that. Would you like to introduce the motion, Mrs. Cunningham?

Mrs. Cunningham: During the course of this presentation, I was aware of the concern you have just raised. This diagram that we put before you is an attempt to describe this exemption board, but it is not our intent that they be paid. I would like to speak to that during the presentation. Creating another board is a problem for us, but we had to put the concept down. We would not be involving any moneys of the crown, we would think. However, I will take direction on that. That is not the intent, and I was aware of that certain procedural problem.

Mr. Chairman: One final item. The additional concern, again in terms of whether this motion is in order, is the factor that a board, if it is going to be set up, would by logical extension require some backup, be it secretaries or whatever to produce minutes and so on that would require the expenditure of government moneys. Unless this is to be run in the vein of perhaps a nonprofit type of operation, it would seem to me that that would place it in jeopardy.

Mrs. Cunningham: I thought of that, too, so I have some responses to that during the process.

Mr. Chairman: If the assurance is that there will be no public moneys whatsoever spent on either the members of the board or in setting up the board or the operation of the board, then I am prepared to withhold making any order, but it will change if—

Mrs. Cunningham: That is certainly the intent. I would need some direction from you as to how it can happen. I am going to present how I think it can happen and I would expect the government to come back and say, "Yes, that will work," or "These are the problems," and we would work them out together.

But the intent is exactly as you stated, that there be no government moneys. We would like to have an existing board, and I will speak to that in the context of what New Brunswick is doing as of this morning. We have just been on the phone.

Mr. Chairman: Perhaps you would like to introduce the motion.

Mrs. Cunningham: The motion I would like to present at this time deals directly with section 4 and it is a package. You will see before you four motions: section 3, section 4, section 9 and section 10. Is it your wish that I read all of these motions into the record?

Mr. Chairman: If we could have unanimous consent to perhaps just read the first motion, because if that fails—I am not anticipating that—the other two would fall by the wayside.

Mrs. Cunningham: It would not be appropriate to deal with any of them separately.

Mr. Chairman: I am not suggesting that. I am suggesting that you just read the first motion for purposes of the record and you can debate all three.

Mrs. Cunningham: Can I be assured that at some point in time the others will be in the record, or do I have to read them?

Mr. Chairman: Why do you not do them all now.

Mrs. Cunningham: I will just read them. All of them relate to each other and they all relate to present sections that we would like to amend in the present Retail Business Holidays Act. I move that section 3 of the bill be amended by adding the following subsection thereto—

Mr. Chairman: I am sorry. Yesterday we agreed to stand down section 3. Perhaps you can deal with your amendment to section 4. We are on section 4. We have just dealt with Mr. Philip's motion, which was defeated. We are now on section 4.

Mr. Cureatz: What did we do that for?

Mr. Chairman: We stood down section 3 because I did not believe the amendment was ready yet, is that right?

Mrs. Cunningham: This is section 3 of another part. Do you want me to get the whole thing out?

Mr. Chairman: The amendments I have before me are an amendment to section 4 and a section 9 being added, and a section 10 being added—oh, I am sorry, I beg your pardon. Okay, there is a page.

Mrs. Cunningham: I think I am in order here.

Mr. Chairman: The clerk advises me we agreed to stand down section 3. Is it the wish of the committee that we deal with section 3? Do I have unanimous consent to revert back to allow Mrs. Cunningham to introduce the package?

Mr. Kanter: We have no difficulty with that. The government may have a motion on subsection 3(2), so I think we should hold down section 3 but for this particular subsection 3(8) of the act.

Mrs. Cunningham: It relates to section 4.

Mr. Kanter: I appreciate that and I have no difficulty with your introducing it.

Mrs. Cunningham: It is most important that it all be read as a package, Mr. Chairman.

Mr. Chairman: Do I have unanimous consent to do that?

Motion agreed to.

Mrs. Cunningham: We are really looking at subsection 3(8) of the said act.

Mr. Chairman: Mrs. Cunningham moves that section 3 of the bill be amended by adding the following subsection thereto:

Subsection 3(8) of the said act is repealed and the following substituted therefor:

"Section 2 does not apply to retail business establishments or any class thereof which have been exempted according to the criteria established under section 4."

On section 4 of the bill, Mrs. Cunningham moves that section 4 of the bill be deleted and the following substituted therefor:

"4(1) Despite sections 2 and 3, the council of a municipality may, under the procedure established in 4(2), designate retail business establishments to be open on any holiday for one or more of the following reasons:

"(a) it is essential for the development or maintenance of a tourist industry;

"(b) it is essential for the development or maintenance of a particular cultural community.

"4(2) A municipality may make application to the Retail Business Holidays Exemption Board for approval of exemptions to the Retail Business Holidays Act.

"4(3) Upon the receipt of an application from a municipality, the Retail Business Holidays Exemption Board has 30 days to indicate to the said municipality whether or not public hearings on the application are necessary.

"4(4) In the event the board determines that public hearings are necessary, these hearings must be held in the said municipality within 90 days of the receipt of the application.

"4(5) Within 30 days of the conclusion of the hearings or in the event no hearings are held within 30 days of receipt of the application, the board must inform the municipality of its decision.

"4(6) The board's decision must take one of the following three forms:

"(a) accept the application; or

"(b) reject the application; or

"(c) accept the application with modifications.

"4(7) In the event that a municipality is dissatisfied with the decision of the board, the municipality may appeal such decision to the Lieutenant Governor in Council."

Mrs. Cunningham moves that Bill 113 be amended by adding the following section:

"9(1) A board to be known as the Retail Business Holidays Exemption Board is established and shall be composed of five members, three of which shall be permanent, each appointed by the Lieutenant Governor in Council.

"(2) The members of the board shall include, but not be limited to, representation from the retail industry, tourism industry, labour, municipalities and religious groups."

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The fourth amendment moved by Mrs. Cunningham is that Bill 113 be amended by adding the following section:

"10(1) The board may exercise such powers and shall perform such duties as are necessary to carry out its functions under this act and without restricting the generality of the foregoing, it may,

"(a) make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it;

"(b) determine with respect to any particular hearing what constitutes adequate public notice;

"(c) in determining any matter, consider any relevant information obtained by it in addition to evidence given at a hearing, if it first informs the persons taking part in the proceedings of the additional information and gives them an opportunity to explain or refute it."

Mrs. Cunningham: That is for the record, Mr. Chairman.

Mr. Chairman: It is your opportunity, Mrs. Cunningham, to address the motions you placed before us.

Mr. Ballinger: Let's welcome the minister, Mr. Chairman.

Mr. Philip: To what do we owe the honour?

Mr. Ballinger: Give us a break, Ed.

Hon. Mrs. Smith: I hope the members noted with interest the nice briefcase I have. I got it on one of my many visits with the Association of Municipalities of Ontario.

Mr. Philip: That only shows that you got something from them. They certainly did not think they got anything from you.

Mr. Chairman: Order. Go ahead, Mrs. Cunningham.

Mrs. Cunningham: Four amendments that are part of a package have just been read into the record. I would like to say at the very outset, with regard to these amendments, it is not that we think our amendments are perfect, but we do think they relate as far as possible to a process that would meet the needs of this government when it comes to the extension of Sunday shopping and the definition or criteria for tourism and cultural activities that seem to be the great challenge these days, as well as a process.

Mr. Chairman, you talked about my being in order with regard to this

particular recommendation as it relates to a Retail Business Holidays Exemption Board. I will speak to that later, but if we could use as an appropriate vehicle a board that already exists, one that is making decisions for this government and already exists—and you as a member of the government would know that better than I do—I would certainly take that under advisement.

It is not my intent to say that this particular proposal, as we put it today, is letter perfect. What we were hoping would happen is that you would take the time to study it carefully, and if you could offer a better suggestion that would meet our needs as well as your own, especially in relation to what you stated earlier about this motion being in order and having members who were not paid, I think that is an ideal intent and it is one I would follow.

As I speak to this motion, I have some suggestions that you may want to consider, but the point I am trying to make with committee members is that we have tried to listen at all of the hearings to members of the public and to the kinds of suggestions they have made, as well as to pick up from the Liberal members and certainly our colleagues from the New Democratic Party and ourselves some suggestions that would cause us to come up with some solution to what I think is a real dilemma for the government at this time.

I would like to start by saying that I was very much disappointed with the amendments which were put forth to section 4 of the act and I will tell you why. I believe the amendment the government is putting forth says two things. It says, first, that when the municipalities are considering further exemptions for Sunday openings, they should or shall or may have public hearings. That is fine. I think most municipalities do that now.

Where we have looked at some of the municipal exemptions with regard to the challenges in the courts, the only reason the present legislation has been upheld in the courts is that the people who are being prosecuted are those persons who have already received some support from the municipalities, who have indicated they do have some idea or some criteria for tourism to support the present legislation.

I am saying that anybody who really does want to be able to uphold the law right now is communicating publicly with his municipality. The amendment put forth by the Liberals may be described as somewhat redundant in that respect.

My second complaint about the amendment is that if you really believe—

Mr. Chairman: I do not want to interrupt you, but we are really addressing your amendment. If it is necessary to refer to the government's amendment to do that, by all means do so, but you will get an opportunity to address your concerns about the government amendment at a later stage.

Mrs. Cunningham: I know. It is really difficult, though, to support your own without showing the weaknesses in the present one.

Mr. Chairman: If it is tied in, that is fine.

Mrs. Cunningham: I am seriously trying to tie it in.

Mr. Philip: She is just showing how hers is—

Mr. Chairman: All right. That is fine. I just want to be sure that

is what is happening now.

Mrs. Cunningham: I usually think I am pretty good at sticking to the issue, but I can be persuaded otherwise.

My second point with regard to the government amendment and why ours is better down the road is that if you really do believe in local autonomy, then maybe you do not tell people how to run their own businesses. This government is now saying: "It has been our responsibility to look at further exemptions to the present act. It hasn't worked for us"—you have not proven that to me, mind you—"and therefore we're going to let the municipalities decide. We respect the principle of local autonomy." If you really respect the principle of local autonomy, I do not think you can tell them what to do or how to do it. I will be speaking to it later, certainly, if necessary. I have a problem with telling the municipalities how to run their business. What to do is obviously the essence of this act, that is, that you have to deal with it, but how to deal with it is the problem for me.

The third part is the expense involved in public hearings. It is one thing to tell them they may—I understand the word is "may"—have public hearings, but boy, then to go and tell them they have to advertise in newspapers and what not—I think most municipalities are somewhat resentful already of having to deal with this issue because they do not want it, and I think they are going to be somewhat more resentful when you start telling them how to do it, and that means the expensive ads in newspapers.

My point there, and moving into our own amendment, is that obviously a lot of headaches are going to be created with this municipal option anyway for municipalities, meaning that just anybody can appear before them for any reason he likes, and this is going to be an ongoing responsibility for municipalities and they may have to deal with the most trivial of applications. I think it will be time-consuming. All of us know our time is our most valuable asset these days and it will probably be extremely expensive.

I have said it before and I will say it again: the vast majority of deputants before this committee told us they thought the present legislation was working, that there were a few problems with it and they appreciated the government trying to fix them up. But if you do not take this amendment today seriously and take a look at how it can work for both the government and the people—meaning, what is the point of all this public participation and all this travelling around the province if we cannot come up with something that relates to their concerns as well as your own? If you do not take it seriously, if you do not take some time to look at it, you are going to be accused, as you have in the past, of ramming this legislation through. And I think that our amendment, if it is dealt with in a thoughtful way, will probably assist all of us in getting ourselves out of a somewhat ridiculous situation.

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The ridiculous situation is simple: Nobody wants this municipal option and it is not necessary because the premise for it has been proven to be incorrect. I am now talking about the idea of it not being enforceable and the idea that a tourist criteria cannot be developed because we have been offered some assistance and we know it can be, and it has been elsewhere and it is going to be elsewhere.

We certainly agreed with our colleagues in the NDP as they put their

motion forth yesterday and as we debated it, that tourism and cultural exemptions should be given a voice, but what we have added today is a process that I think is extremely democratic and highly responsible. What we are really saying here is we have a way to deal with this Sunday shopping issue that really, quite frankly, and I will underline this, tosses the ball back into the provincial government's court where it belongs. That is really the greatest criticism of the whole bill.

What we are presenting here is a framework that I think is, in the words of the Solicitor General and certainly in the words of Mr. Kanter, something that we are looking for. It is workable, it is fair and I think it can be considered easily and understood without the headaches that I think the present amendment by the government will cause for many municipalities and more importantly, for members of the public.

I am going to go back and finish these opening remarks by saying it was brought to my attention and to the attention of all of us on a number of occasions that it is okay to be part of this political arena and banter back and forth about things that some days, when you are sitting long hours you think are kind of fun, but the public has to live with this and it does not really want to work on Sundays.

I would like to deal with section 3 first of all. My comments to all of this will be rather brief. What I really would appreciate would be some questions if anyone is interested in pursuing these amendments.

Section 3 establishes the framework and prohibits any retail outlets from opening, and I will underline, except in the case of any exemptions made by the process outlined in section 4. So, in fact, we have tightened up the present legislation here and have listened to the municipalities and have said, "Look, you do not even have to establish bylaws now." We are going to take this, make it our responsibility, protect the common pause day as far as possible and we are going to say to you that when you get an application, you can deal with it in your own way. But as you can see now, I will move quickly into section 4, we have a process whereby which it will be dealt with provincially and that is what we think should happen.

In section 4, what we are doing here is obviously recognizing in subsection (1) the development or maintenance of a tourist industry, putting that back into the framework and going a step further because of, basically, the comments by my Liberal colleagues on this committee, and they kept saying, "What about Chinatown?" So, for a discussion or as a response to the public input and as a response to the questions by the members and the concerns of the Solicitor General, we are adding, "it is essential for the development or maintenance of a particular cultural community," as did our NDP colleagues earlier.

Now, you can take a look in subsections (2) through to (7). What they really mean is put in chart form on the front of our proposal here. I would like to go through this step by step and will not dwell on any one of them really, except to explain them.

Step 1: The municipality, after listening to the applicant in his or her local municipality, will decide whether the applicant would meet—and it is important to say this—the intent of the legislation. The intent of the legislation which has been upheld in the courts so far deals, quite frankly, and I will not go into detail, with the exemption for either tourism or culture. If we have a serious applicant who meets with the intent of the

legislation, and here we are putting the framework in place rather than leaving it wide open, the municipality then will say yes or no. If they say no, you are finished; if they say yes, we will then proceed in step 2 to make this application to the Retail Business Holidays Exemption Board.

We are calling it Rexboard. It does not have to be that; it can be another board. I want to make that quite clear. Section 9 will describe it and I will speak to it in more detail there. We are looking at the process here.

The board would consider it within the intent of the legislation. Just to give you an idea of the problem—we are looking at tourism and culture again—since the present legislation is able to be upheld in the courts, we think any criteria which can be developed—The government can really take some direction here, I think. It did not like our plan last week, but we have lots of time to decide on certain criteria for tourism and culture. If the present act with just the simple phrase, "essential for the development or maintenance" can be upheld in the courts, maybe that is all that particular board needs to deal with. You can certainly speak to it.

At that board level, the board has 30 days to either accept the application from the municipality on behalf of whoever has made the presentation, reject it or recommend public hearings.

Step 3 is that if they have the public hearing, there is a certain time frame put in. They then have 90 days beyond the date of application to conclude their public hearings which will be held in the municipality from the day of the application.

Then they have another 30 days, in step 4, at the end of the conclusion of the public hearing, to make their decision, which would go back to the municipality.

We have built in a time frame because we think that is responsible, and we hope we have also looked at the cost. I will go into the next section now to tell you more about that.

If the municipality is not happy with the decision of the board, it can, as it can under many processes in this government, appeal actually to the cabinet. That is not unusual. That is our subsection 4(7): "In the event that a municipality is dissatisfied with the decision of the board, the municipality may appeal such decision to the Lieutenant Governor in Council."

I would like to move on to the third part, section 9. You drew it to my attention, Mr. Chairman. I can only tell you what is happening in New Brunswick now. I have to tell you that we did this work before we were able to contact New Brunswick, which in fact did meet while we were having our deliberations this morning.

Mr. Ballinger: It sounds like coercion to me.

Mrs. Cunningham: No, it was not. We just got lucky; let's put it that way. The Ministry of Municipal Affairs and Environment in the province of New Brunswick is responsible for the Days of Rest Act before it becomes law. I really like the title of that act, by the way. It really does say what it means.

The amendments committee did meet and will meet two more days during the month of October. The spokesperson for this department of the ministry has

been spending as much time on the phone talking to citizens from New Brunswick as they have been talking to citizens from Ontario. That just lets you know the interest around—

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Mr. Cureatz: Yes, except this committee would not let us have witnesses from there.

Mrs. Cunningham: I am just letting you know that there is a lot of interest around this particular legislation outside our own province. People are looking to Ontario for some leadership here. I think we have an opportunity to take on that challenge and to respond to our public hearings and the presentations and show some leadership.

It has two responsibilities as has been delegated to it by the government. One is to review the parameters or the criteria for tourism and to report back. Therefore, it is looking at it as I wanted to look at it; the government did not support my resolution last week but we still have lots of time. This is far-reaching and I do not think anybody wants to be accused of ramming through legislation that so directly affects the quality of life.

The other part of its responsibility and direction is that the province should be using an existing board in looking at the granting of further exemptions—which is exactly what my dilemma was; I was not sure which existing board would be appropriate—for two reasons, the same two reasons I would like to put forth. First, we are not in the position of creating another level of bureaucracy, especially a level of bureaucracy that is paid. I have some recommendations there.

Interestingly enough, New Brunswick—you might all chuckle at this because I did—is using a board it even chuckles at, but it is going to work, and that is its liquor licensing board. It is really scurrying around not to create a larger bureaucracy but to work within the present government structure. I think we can do that in the same way. In looking at section 9, I do have—

Mr. Ballinger: It is using the liquor license board to give a tourist exemption?

Mrs. Cunningham: Yes. I do not think I want to do that but I do have some recommendations.

Mr. Ballinger: Let's talk about the real world.

Mr. Cureatz: That is that Liberal government in New Brunswick for you.

Mrs. Cunningham: The recommendation I have, if you take a look at subsection 9(1): "A board to be known as the Retail Business Holidays Exemption Board is established and shall be composed of five members, three of which shall be permanent, each appointed by the Lieutenant Governor in Council."

The intent there is that the members will not be paid and that three of the members will be permanent and two of them will be from municipalities, to represent the retail industry, tourism industry, labour, the municipalities themselves or religious groups, depending on what the issues are they are

considering at that particular time. The two members can in fact be appointed on an ad hoc basis.

I did chat with Tourism Ontario which is an independent board and does have a number of volunteers. It advised me that the Ministry of Tourism and Recreation is represented on its board. In fact, the assistant deputy minister of Tourism and Recreation is one of its members. It could be that particular individual or it could be a delegate. Tourism Ontario also has on the board the director of the tourism development branch from the ministry. Those are two of its many members. It would be my recommendation that you seriously look at having the Ministry of Tourism and Recreation perhaps be responsible or have Tourism Ontario be responsible for this particular body and have some kind of liaison and work with the government's tourism policy co-ordinator who we found to be most informative as we proceeded with these amendments and with the ongoing discussions as a result of the input from the public.

I think section 10 really does speak to the duties of the board. The underlying factor there is that they are there to provide proper information.

I would just like to conclude my presentation on these amendments by saying a couple of things. During our hearings, one of the questions that was asked regularly by members of the government was, "Do you think if we build in a public participation process that this particular piece of legislation would be more acceptable to you?" In most instances, some 17 instances, the response was: "No. We know what you are trying to do, and quite frankly, we do not want to have to deal with this legislation at all. We do not want the responsibility of having to go before a municipality and in fact participate in any of these public meetings, because we think you are looking for a hook out when it comes to making your legislation more palatable."

I do not think, and I am certain I can be assured, that the presenters or witnesses that appeared before this committee are going to be bought off with public hearings.

First of all, I mentioned that the motion put by the government for these hearings was somewhat redundant and flew in the face of what local autonomy really means. I just want to tell you that as a result of the process, that question was asked on a number of occasions. On the 17 we were able to document, as a result of reading Hansard, the response was, "Do not try to kid us." In a few others, they did say: "Well, it might make it better; it might not."

I do not want you to be deluded that public hearings are the response of the witnesses. That question was asked on a number of occasions. I recorded it and the public did not buy into it, at least those who presented themselves before this committee.

I would also like to say that in the last couple of days it has been brought to my attention that members of the government have been dealing with some of the major groups that appeared before us. I am not aware of a lot, but I am aware of two or three. I just want you to know that is really not consultation in the form I would expect. This particular act is really far-reaching, and I think that if we have some items upon which we want to further consult, we could even take the time in this committee to get some responses to the amendment I have placed before you today, as well as to the amendment the government has put forth.

This legislation is far too important to be making deals or whatever on

over the telephone or in members' offices. I just do not think that is responsible.

I should also tell you that one group did come to me today, so I do not want anyone to misunderstand what it was trying to do. I do not have the letter in front of me but it was from the small business group. Mr. Ballinger, do you have a copy of that letter? Could you give me yours? Have you got it? You might have been given the only one. Does anybody else have a copy of that letter?

Interjections.

Hon. Mrs. Smith: The convenience stores one?

Mrs. Cunningham: Yes. Have you got it? Okay. That is fine. Thanks, Bill.

I have to say that it goes to show the way we work together when I ask a member of the government to provide me with the information. I appreciate it.

Mr. Ballinger: You are supposed to remember that after.

Mrs. Cunningham: I am remembering it. I am remembering it now. The point I would like to make is that the president of the Ontario Convenience Stores Association—his delegate this morning; I was quite surprised to see this because it looked almost as if they were agreeing with the government. I want to assure you that with a large majority government like this, sometimes the inevitable presents itself very early in the day. If one is going to be stuck with some amendments and they are asked to polish them or make them better, then that would be a responsible thing to do, and I think they have done just that.

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Underlying this piece of paper and the intent of this piece of paper was just to make some impression on the government, to say, "If we have to live with it, because you have this big majority on this committee or in the government, then we will polish it up a bit."

I want to assure you—we could poll the Ontario Convenience Stores Association before us, but I do not think we should unless we agree to further public hearings—that they are not pleased with the municipal option. They answered that question when I asked them in the first place, and they too said, "We do not want to deal with this legislation at all." So I am just telling you that I spoke to the spokesperson this morning, because I was surprised.

Therefore, I am saying that the municipal option is not acceptable. We are not going to be hoodwinked by thinking right now that polishing up amendments is a solution to the government's problem.

I want to end this on a more positive note; I really do. I do not want to miss the opportunity to make that point. It seems to me that we still have a lot of work to do. It seems to me that we have before us now a motion that takes into consideration the concerns of the government, and more important, takes into consideration the concerns of the 267 individuals or groups that appeared before us.

If we are not going to treat this seriously and if the government is just going to ram this through today without looking to and getting responses from the Association of Municipalities of Ontario, whose director I spoke with just before I came in here today—you have not contacted them. You may have contacted an individual member, a more prominent politician, but not that group. They have not been contacted about your amendments. We were trying to get some feedback on ours. Quite frankly, I think we owe it to them to get some feedback on this very important section of the bill.

With that statement, I will conclude my presentation of these four amendments.

Mr. Chairman: Mrs. Cunningham, I still have not heard, and I have to have this information: as I said before, my initial reaction was to rule the amendments out of order because they establish a board which in the normal course of events would require expenditures of money.

Mrs. Cunningham: Could I very clearly read into—

Mr. Chairman: As you know, that is probably one of the clearest rules as to why an amendment is not in order. It has to be brought by a minister of the crown.

Mrs. Cunningham: I tried to do two things though.

Mr. Chairman: I have not heard that, so maybe you could tell me that.

Mrs. Cunningham: Mr. Chairman, I will underline it again. I said two things. First of all, I would urge the government to seriously look at this motion, because I said from the very beginning that this part of it is not perfect. If we have a board operating right now that would take on this responsibility, there would be no cost at all.

Mr. Chairman: I appreciate what you are saying, that the government take it on, and the government certainly has your amendment before it, but it would be unrealistic—I do not mean this in a disrespectful sense to you—to say that even if an existing board were to take this on, there would not in fact be additional costs. Therefore, it contravenes the very—

Mrs. Cunningham: So you are suggesting that if there is one penny spent, this amendment would only be in order if the government brings it forward.

Mr. Chairman: I am not sure whether it would be one penny, but certainly if it anticipates money being spent, it is clear in the long-standing rules, not just our rules, but going back into the precedents of English common law—

Mrs. Cunningham: I would suggest that if the government is serious about looking at this process, which is one I think responds to everyone's wishes, it would be able to solve that problem. You would have had a problem in placing this, given your position. I do not mean you particularly, Mr. Chairman; I mean members of the government.

Mr. Chairman: I do not debate that at all. It is probably awfully difficult.

Mrs. Cunningham: There are certain procedures we all have to live

by. On the other hand, does that mean that any time we are trying to present anything and you look in your rule book, which you have done on two or three occasions but quite frankly in spite of saying that I think you have been most fair, that we cannot do it?

I will tell you what I will do instead. I really object to being hamstrung in the sense that it cannot be for procedural reasons, although it is very practical and all those things, that you will not accept it. If you are seriously going to look at it, maybe you can find a way to make that work. For the purposes of this discussion, I will say that this Rexboard, the Retail Business Holiday Exemption Board, be changed to Tourism Ontario, which has members of the Ministry of Tourism and Recreation there.

Mr. Chairman: I am not sure if they are paid. Are they paid?

Mrs. Cunningham: They are not paid. I can tell you right now that it is a private, nonprofit federation of hospitality and tourism groups. They meet quarterly or more frequently than that. It is "an independent board of volunteers." That is a quote from the executive director of that group. I have really tried to do my homework. Are there any other little wingers that you would like to send my way at this point in time?

I would therefore call that Rexboard a board of Tourism Ontario.

Mr. Chairman: Where are you inserting that?

Mrs. Cunningham: Tourism Ontario has members on that board who represent the Ministry of Tourism and Recreation, specifically the assistant deputy minister of tourism and the director of the tourism development branch.

Mr. Chairman: I am sorry. Is this subsection 9(1) that you are amending?

Mrs. Cunningham: Subsection 9(1), "A board to be known as the Retail Business Holidays Exemption Board"—we can still call it that—"is established and shall be composed of five members...."

Hon. Mrs. Smith: Where does the tourism fit in here?

Mrs. Cunningham: Let's strike out the other part and say, "...five members of the Tourism Ontario board." No one is more devoted to promoting tourism, which is a major industry in our province, than that particular board.

I am very much aware of what they said in their presentation and I am very much aware of what they would do, given the direction of the intent of our amendment.

Hon. Mrs. Smith: On a point of order, Mr. Chairman: Does the member feel that in making this very major change to what is in front of us, she is speaking for the party? It is a complete reversal to say that we should appoint the Tourism Ontario board—

Mr. Chairman: I am not sure if that is a point of order.

Mrs. Cunningham: I am not sure. I am given the freedom to come here and respond to the public. I have to tell you honestly, in the most professional way I can—I have not been given direction, although I have consulted from time to time, definitely. Are you talking about the Progressive Conservative Party?

Hon. Mrs. Smith: I have been ruled out of order. It just says "PC motion" at the top and I wondered—

Mrs. Cunningham: That is right. When I am here, I am speaking for the party. I want you to know that I am free to speak, as Mr. Cureatz is, freely.

Mr. Chairman: Can we just be clear, Mrs. Cunningham, as to the exact wording of subsection 9(1), whereby it would clearly indicate that there would be no public moneys allocated.

Mrs. Cunningham: I want it to be made very clear. I said two things when I started today. First of all, I said the motion was not perfect. If you are all intending to shoot this thing down and then make a big issue out of us speaking to Tourism Ontario as the board, I do not think that is the intent of it.

Mr. Chairman: I do not want you to take this personally. I am making a ruling as the chairman of this committee whether or not a motion is in order. In fact, I have even sent the clerk off again to check the three of them, because I have my doubts. I do not like to question Mr. DesRosiers's judgement, but with all due respect, I think he is wrong and I think he should have ruled it out of order, but—

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Mrs. Cunningham: Mr. Chairman, if you are sending your clerk off and I am having to speak on my feet right now, trying to respond to your concerns, could I call for a recess so that I can check what I am doing on a matter of procedure. I am trying to respond so the government will buy into this. I am not trying to be tricky or anything.

Hon. Mrs. Smith: Mr. Chairman, is it possible that we could agree to allow the conversation to continue without questioning the legality until such time—I am quite prepared to listen, even though it may, in the end, turn out to be out of order.

Mr. Philip: May I make a proposal, Mr. Chairman, that I think would be the simplest way of making this in order. That would be that you can simply add a regulatory power to the bill which would permit the Lieutenant Governor in Council to set fees for any application and that all costs of the operation of the tribunal would be paid for out of the fees collected.

If you gave that kind of regulatory power—it is quite common in regulatory bodies, in applications and so forth, to have fees that cover the costs of a municipality. We have fees for the simplest of licences and things.

Hon. Mrs. Smith: Who will pay the fees?

Mr. Philip: The applicant who wishes to have the stores open on Sunday.

Mr. Chairman: I am not going to rule on whether that is appropriate or not, because the chairman is not allowed to give legal opinions. But I am going to ask the legal staff here whether that is in fact a way to—

Mr. Philip: You cannot do it under the present regulations. You have to move another regulatory power in the bill, but you could simply do that and

that would solve your problem.

Mr. Chairman: I would like some advice from legislative counsel whether or not those funds, even through a regulation, go to the consolidated revenue fund and are moneys paid out.

Ms. Mifsud: Mr. Chairman, I cannot recall any regulations that give that grant power. There certainly are regulation-making powers to set fees for applications, but they rarely cover the costs of running a board or the costs of the hearing.

Mr. Philip: Are you saying then that there are regulations that allow for the setting of fees?

Ms. Mifsud: Yes.

Mr. Philip: All right. So that principle then is established; we can do it. Then there would be nothing that would prevent the regulation from further stating that a municipality will, from time to time, review the fees to ensure that the fees meet the cost recovery of the tribunal. Would you agree that could be done?

Ms. Mifsud: Yes.

Mr. Philip: Therefore, my proposal, according to counsel, would in fact solve the problem and I thank counsel for her learned opinion.

Mr. Ballinger: Oh, Ed, you're so proud of yourself. I can tell; it's written all over your face.

Mr. Chairman: I want to speak to the clerk as well.

Hon. Mrs. Smith: It is full of holes, Ed; no way.

Mr. Chairman: I think perhaps we will recess until 3:15 p.m. to give Mrs. Cunningham that opportunity. I want to speak to the clerk, too, and find out what the—

Mr. Philip: All I can say is that if I were on the bench judging this case, then—

The committee recessed at 3:04 p.m.

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Mr. Chairman: We are back in session. I had indicated my concerns in terms of the question of public moneys being required to be spent. There is nothing in the bill that indicates public moneys would be spent. If there is a doubt as to the question of public moneys, then I suppose the doubt has to be resolved in favour of the amendment.

However, what happens during recess is that you look at the bill again, and there is some question as to whether the amendment is out of order in that it actually nullifies the procedure proposed under the government bill, that it is actually outside the scope of the bill. I understand Mr. Kanter apparently is prepared to give unanimous consent—

Mr. Kanter: I cannot give it totally on my own, Mr. Chairman.

Mrs. Cunningham: Come on, Ron, you at least have that kind of power.

Mr. Ballinger: Oh, no, he has not.

Mr. Kanter: I am prepared not to object, Mr. Chairman.

Mr. Chairman: I wonder if Hansard records "Ha, ha, ha," because this is going to be a funny-looking Hansard.

In light of my understanding that the government and, I presume, the opposition parties are prepared to give unanimous consent to discuss this, debate it and vote on it, I am simply putting this on the record to let anyone who ever reads this know I did my job. Go ahead. Is there unanimous consent that this amendment by Mrs. Cunningham be dealt with? I see nodding of heads. I presume there is, so go right ahead.

Mr. Cureatz: Have we got more speakers on this?

Mr. Chairman: Mrs. Cunningham has finished. I do not see any further—

Mr. Cureatz: Unaccustomed as I am—

Mr. Chairman: If there are no other speakers, Mr. Kanter is next.

Mr. Cureatz: I was speaking to the proposed amendment.

Mr. Chairman: As a matter of fairness, Mrs. Cunningham has spoken. I am going to go to Mr. Kanter, then to Mr. Cureatz.

Mr. Kanter: Unlike Mr. Cureatz, I will not stand and lecture the assembled throng, nor will I be as funny as Sam.

I want to preface my remarks with a few comments about Mrs. Cunningham. I have come to know her on this trip, as all of us have, working together closely as a committee. I think she has taken her role on this committee very seriously and I appreciate that. I think her efforts have been serious ones. She has obviously gone to considerable effort with respect to this particular amendment and I felt it was appropriate that we discuss it as fully as possible in spite of any procedural concerns the chairman might have. I appreciate that the chairman is also doing his job in this situation.

What I would like to do is really analyse the effects of this bill according to some of the criteria Mrs. Cunningham herself set out. When she introduced her motion, really at the beginning of her remarks, she talked about local autonomy; she talked about public hearings and the pros and cons of public hearings; she talked about things not being too time-consuming; she talked about expenses—and I know we get on shaky ground there because of some of the comments of our chairman; I will try to stay on the right side of those—and she talked, in the end, about Tourism Ontario and the role it might play.

I would just like to analyse briefly her amendment in the light of those values because, quite frankly, I think those are good values. I think those are important considerations and important concerns.

First, she said she believed in local autonomy. I certainly welcome that

belief and concern. I understand she has a lengthy background on the board of education in London and that is certainly a very important local body.

1530

I am concerned about the kinds of limits, restraints and shackles she is putting on local autonomy with her amendment, for a number of reasons. First, there is the limiting of the reasons that municipalities can even consider Sunday openings or closings: they are limited to tourism and a particular cultural community.

I think one of the advantages of our travels to see the diversity of Ontario was to see how different communities used the existing exemption in different ways. One of the very few places I missed was Thunder Bay, where the community allows stores to be open a very limited period of time for seniors and handicapped folks. That would not be allowed even to be considered under the proposal. We were in the Niagara Peninsula. We understand that Niagara Falls is open. We were in Windsor. We understand that Windsor is open.

There was some discussion about the use of the tourist exemption where one of the reasons advanced for the Sunday shopping exemption in those communities was to discourage Ontario residents from shopping elsewhere. I understand there are some shopping plazas in Buffalo, New York, or Detroit, Michigan, or Sault Ste. Marie, Michigan, whatever, that used to be full of Canadian licence plates on Sundays. I think city councils in those communities were concerned about that.

Those are some of the other reasons municipalities have decided to open up. I think there are other reasons still. There are some communities where many workers are engaged in mining or shift work; the nature of the local labour force. There may be other valid reasons communities are open. We talked about St. George, again a different kind of community. It may not be a tourist mecca but the community may have decided to open for reasons valid in that particular community.

I think the real shackles on local autonomy come in the later stages of the bill. Mrs. Cunningham expressed her concern about local autonomy. While she would first restrict the areas, limit it to two criteria, even after the municipality makes a decision—makes a proposal, I suppose it would be—it then has to apply to this board.

I guess we could call it in short form the Rexboard or the Hexboard or the Tourism Ontario board, whatever it is going to be called, but the important point is that the local municipality, members of the local council, who presumably are most familiar with local conditions, are going to have to apply to basically a provincial body. You can set it up in various combinations and permutations but ultimately it is a provincial body. I understand there is some flexibility in the appointment of it, but as it now reads, it is a body to be appointed by the Lieutenant Governor in Council.

I notice with some interest, "The members of the board shall include, but not be limited to, representation from the retail industry, tourism industry, labour, municipalities and religious groups." I think members of this committee are probably more aware than anyone else around of the tremendous diversity not only between those groups—I have quotes, and we can all probably recall the quotes, that Tourism Ontario thinks tourism includes everything, certainly including shopping. Religious groups think we should go way back in time where you hardly do anything on Sunday. To take some very

extreme examples, people were concerned about some of the recreational activities a lot of people engage in on Sundays. Labour groups, the official voice of labour in this province, said we should have tourism exemptions limited to resorts, I believe it was, and we should cut back on shopping hours during the week.

There would be tremendous differences between those groups. I think there would be tremendous differences within groups, the religious groups, for example. I think there might have been a time when it would have been possible to choose a representative of religious groups in Ontario. When we were a relatively homogeneous society, it might have been possible to choose someone from a mainstream Protestant denomination, perhaps, as representing religious groups in this province. I think the time has passed. I think we saw a wide diversity between a number of mainstream groups, what I might describe as mainstream Christian groups, between more fundamentalist, evangelical groups, and with the Jewish community that appeared and the Mormon church that appeared. We know there are many others.

So it would be extremely difficult to pick representation in this group. I just do not think you can represent the province of Ontario on this issue or indeed on most issues with a group of five people. I guess I made a little fun of the member's previous proposal, but if you had a committee of 203 people to define tourism, at least it would have been more representative. I do not think it would have worked better, but it would have been more representative of the variety of people that we have in this province.

I am going to go on to the second point, the second value that Mrs. Cunningham held out as an important one. I perhaps should not say it was a value in her case, but she was a little concerned about public hearings. In her proposal, I note that public hearings are optional, that the provincially appointed board should decide whether or not public hearings on an application are necessary for an application in an individual city. I find this impractical. I find it impractical because I know, as a local representative, that parts of my riding get very concerned and upset about some things and other parts do not.

I know that some parts of Toronto get concerned about group homes or various matters. Quite frankly, parts of Toronto would be very concerned about stores opening on Sunday and parts of Toronto would not be concerned about stores opening on Sunday. I think I have some feel for it because I am familiar with the community.

It would be very difficult for someone from a provincially appointed board to know whether an outfitter in Kenora should be open in September and October or whether the tourist season is over in August. I certainly do have that information. Mr. Hampton might, although I think he is sleeping. I just thought we would rouse you there, Howard.

These issues really depend on knowledge of the local situation, which I think local members are much more likely to have. The argument might be that the local board will listen to the local community to see if there should be hearings. In other words, we would have hearings about hearings. Should we have a hearing? Is it an important issue in the local community? You would almost get into a situation where we have hearings about hearings.

I do not want to stray too far from Mrs. Cunningham's motion, but our suggestion that we have public hearings, just as they have in the Planning Act, which all municipalities are familiar with, would be a much cleaner, more

practical, more effective solution, allowing local residents a lot more input into this decision that affects them.

There was the question—a concern I have, quite frankly—about how time-consuming this proposal would be. We have a local council decision. We have a question of possibly having hearings. If hearings are held, I am not quite clear about whether the board is bound by those hearings or whether the hearings and the board decision are kind of independent from each other.

Then we have a cabinet decision. I know how busy cabinet is. I am not, obviously, a member of cabinet, but I know the tremendous range of decisions that cabinet is involved in. This may be something the minister is clearly in a better position to speak to than I am. I do recall, however, a process similar to this that I had some familiarity with when I was a member of our local council.

At that time, under the Planning Act, every planning decision, no matter how minor, every committee of adjustment decision, every—what do they call them in rural areas, Sam, land division committees or something like that?—every land division committee, every severance could be appealed first to the Ontario Municipal Board and subsequently to cabinet. I do not know whether you faced any of those momentous decisions during your brief stay in cabinet, Sam.

Mr. Cureatz: No, but we stopped that.

Mr. Kanter: I agree they were stopped. I think that was a good decision of the previous government. I actually think the previous government made some good decisions. It might have been your influence, Sam. I can recall—

Mr. Chairman: You are straying from the motion.

1540

Mr. Kanter: I do not think I am straying, with respect. Perhaps I have been overly influenced by listening to some of the speeches of my colleagues. I thought I was addressing the issue of an appeal to cabinet in subsection 4(7) of the motion before us: "In the event that a municipality is dissatisfied with a decision of the board, the municipality may appeal such decision to the Lieutenant Governor in Council." I was suggesting, Mr. Chairman, with your indulgence, that it is pretty relevant, that this—

Mr. Chairman: As long as you mention the amendment from time to time, as Mr. Cureatz did.

Mr. Kanter: I will take that cue from Mr. Cureatz. I was suggesting that this might in some cases lead to issues specific to a municipality being either sloughed off and not treated with the concern they should have in cabinet or take up a lot of cabinet time. I do not think either of those results is very satisfactory.

I dealt briefly with the question of who might be on this board. We were sort of engaged in a very quick-change operation during the course of these hearings where we have gone from five people appointed by the Lieutenant Governor to some people who represent Tourism Ontario. I remember the presentations of Motels Ontario and Tourism Ontario and remember their very, very broad definition of tourism, which included shopping in almost all cases.

I see Mr. Ballinger has it here. I suppose if I wanted to just fill in the time, which is not my objective, I could read from that motion. But I am sure all members will recall they had a very broad definition of tourism.

Interjection.

Mr. Kanter: Thank you, Mr. Ballinger. You are inciting me to read it.

Mr. Ballinger: I am just dying for you to read it.

Mr. Kanter: Give me the book, Bill, and I will read it into the record just to remind Mrs. Cunningham, because I think it is quite at odds with her view of whether or not we should tilt towards Sunday shopping, which I believe her motion would inevitably lead to.

"Simply stated," according to Tourism Ontario, "tourism is the direct supply of goods and services to facilitate business, pleasure and leisure activities away from the home environment." It covers a broad range of products and services, including: transportation," and they give some examples, "accommodation, food and beverage services, live and participatory entertainment," and they give some examples, "conventions, meetings and symposiums, amusement activities," and they give some examples, "and to a significant extent, shopping."

Then we have other information that shopping was one of the leading activities for tourists in Ontario—number one, number two or number three.

Clearly, people from Tourism Ontario take a very expansive view of the importance of shopping. I would submit to Mrs. Cunningham that in terms of her oft-stated concerns and her opposition to wide-open Sunday shopping, I understand this would certainly not be furthered by having a provincial board consisting of some or all of the representatives of Tourism Ontario.

I commend Mrs. Cunningham's energy and efforts. I think she has made a serious attempt here, but she is going in the wrong direction. She set up a plan that is very complicated. Some people have described it as a bit of a merry-go-round. I think it is going in the wrong direction. There is some danger that some of these proposals are just going to spin totally out of control.

The trend of various decisions in this province, not just limited to Sunday shopping and not just limited to planning, is to give more authority to local councils, not to take it away. What this would do, in fact, is take away some of the authority local councils and regional councils have held.

I just want to comment very briefly on one of the last things Mrs. Cunningham said. That is how we were proceeding, the process here, because it ties into comments by Mr. Philip. I am sorry he is not here now. He was saying in his motions yesterday that we should delay this motion, that the government should consult more and that the government has not consulted enough.

If anything is clear, it is the fact that this government has consulted publicly through this committee, through hearings of 14 municipalities, including Toronto, and through extensive hearings in Toronto. We have spent tremendous energy on the most public possible kinds of consultation. I disagree very strongly with Mr. Philip, obviously, that we should do it in some sort of government-only consultation. Clearly, our efforts are devoted at public consultation. I appreciate Mrs. Cunningham's efforts and attempts, but

I think they are going in the wrong direction. I think they are complex, unwieldy and potentially very expensive, although I have kind of avoided that track.

Given the problems this issue has caused to all of us and remembering the fact that we are paid, however well or modestly, for our efforts as provincial members, and we have even got a little additional stipend for sitting on this committee almost constantly this summer, as most of us have, I think it would be very difficult to get people to sit on any sort of review board for free.

The legislation is important. I think our amendments reflect the concerns that groups have had. I too have reviewed the various groups that have appeared before us, and the information prepared by Susan Swift was very helpful. There are a number of groups that ask for the participatory process, including one of the umbrella opposition groups.

I will have more to say on the positive aspect of our amendments, but I think they meet the concerns Mrs. Cunningham, the other members of the committee and I have heard. They meet them in a way that is more respectful of the values of local autonomy. Public hearings allow the public to have a chance to be heard; it is less time-consuming, less expensive and more representative of the diversity of this province than the proposal of Mrs. Cunningham.

Mr. Chairman: Thank you, Mr. Kanter. Mr. Cureatz is next.

Hon. Mrs. Smith: No. It goes in order of party, does it not?

Mr. Chairman: Oh, I am sorry. That is right. Mr. Hampton, I wonder if you want to proceed now?

Mr. Cureatz: Mr. Chairman, on a point of order: There is the necessity of time, and we certainly do not want to get into the same situation we did yesterday where I unfortunately ran out of time and had to return. There might be some agreement if our NDP colleague voiced his thoughts and concerns and Mrs. Cunningham could reply to Mr. Kanter. I do not know how far we can go on with it, but perhaps we could maybe wrap this up by or shortly before 4:30.

Mr. Chairman: Would you be prepared to vote at that point?

Mr. Cureatz: Yes.

Mr. Chairman: Do we have unanimous consent on that?

Mr. Cureatz: Maybe Mr. Kanter wants to respond to Mrs. Cunningham.

Mr. Chairman: Just a second. Do we have the unanimous consent that that is the way we will proceed?

Mr. Cureatz: Yes.

Mrs. Cunningham: Yes, we—

Mr. Chairman: Do I have unanimous consent that that is the way we would deal with it? Mr. Hampton first, Mrs. Cunningham to respond and the response would end about 4:25 and we would hold the vote at that point.

Interjection.

Mr. Chairman: At 4:25. I am asking for unanimous consent. Is that agreed to?

Mr. Cureatz: Or earlier.

Mr. Chairman: Or earlier. Is that agreed to? We have unanimous consent.

Mr. Philip: What did we just give unanimous consent to?

Mr. Chairman: While you were outside, we just unanimously—all right. Now we will proceed, Mr. Hampton recognizing that unanimous consent.

Hon. Mrs. Smith: Just as a point of interest, or if I can call it order since it is the same sort of question, we are going to Mr. Hampton, then Mrs. Cunningham. I do not mind if I do not speak at all. I just want to be clear as to whether this precludes—it is only if the committee wishes to hear from me that I wish to be heard from. I am quite content with that as it stands.

Mr. Chairman: We have given unanimous consent to try to get the vote before the end of the day.

Hon. Mrs. Smith: I agree to the vote.

Mrs. Cunningham: Would that mean that the minister would be prepared to answer a couple of questions as part of my response?

Hon. Mrs. Smith: Up to 4:25. I would be prepared to answer questions only if I am allowed to speak. I do not think I am here to be grilled. I am here to speak on behalf of my position, and while I am prepared to answer questions, I do not intend to be treated like a witness with nothing to say except to answer your questions.

Mrs. Cunningham: I have seven points to respond to and I have two questions.

Hon. Mrs. Smith: Maybe I should be allowed to speak before the rebuttal of Mrs. Cunningham, since she has spoken of it. I do not want to interfere with the vote.

Mrs. Cunningham: I just have as part of my response—

Hon. Mrs. Smith: We agreed to vote at 4:25.

Mr. Chairman: My inkling would be that that might result in the vote not taking place at 4:30.

Hon. Mrs. Smith: I would be glad to leave at 4:20, so we may be sure that my presence will not interfere with the vote.

Mr. Chairman: Let's play it by ear then. Mr. Hampton.

Mr. Hampton: I just want to indicate for Mr. Kanter's benefit that though I was tempted to fall asleep during his dissertation, I struggled very hard and I managed to avoid it.

1550

Mr. Kanter: I saw you nodding off.

Mr. Hampton: No, Ron. I was thinking very deeply about some of the less profound things you had to say, and I want to respond to some of those.

From the outset, no one in this debate has said this was an easy task. No one has indicated that we would not find a great deal of diversity out there. No one has even indicated or thought naïvely that we would not find groups out there trying to promote their own interests in terms of trying to arrive at a proper regulation of Sunday shopping and Sunday working. There are groups out there that have come to this committee whose only concern was their own interest. The rest of the world can go wherever it wants to go in a handbasket as long as they get what they want, their little piece of the pie. You are going to face that on any given issue.

Having seen that, I do not think we can then throw up our hands and say: "There's no commonality out there. There's no community of agreement, so let's throw up our hands and give it to the municipality." Sometimes when I hear Mr. Kanter emphasizing the difference of views, I think that is what he is trying to say.

I want to speak in favour of this amendment because, to emphasize what I said earlier this morning, there has to be something better than throwing this whole field open to whatever the market will bear, whatever the market wants and whatever competitive business pressures force. There has to be something better, and that is what this amendment is directed at. It says very specifically that it is essential for the development or maintenance of a tourist industry.

We recognize, and Mrs. Cunningham recognizes in her motion, that there is something unique about the tourist industry. It is a little different. It may operate at different times of the week. It also recognizes the distinctness of cultural industries or of certain cultural activities in certain communities. We are saying that is as far as it goes. That is where the line should be drawn. Again, that is what Mrs. Cunningham is saying, that that is where you try to draw the line.

You are going to find some people who want to be outside that line and some people who want to be inside that line. That is part of being government, drawing those lines. Sometimes it is tough, but to merely fob it off on the municipalities—Municipalities have said time and time again, "If you throw it at us, you're really throwing it open to competitive business pressure." That has been their message: "If you throw it at us, it becomes a matter of who has the most money, who has the most political clout, who can push it on us, who can force it and what the market wants at any given time and in any given place."

As we from our party said this morning, we think that is a great mistake, that it is going in a direction opposite to the one Ontario wants to go in, which the Ontario communities have indicated they desire to go in. I say again I think this amendment speaks to that. It tries to draw some lines. I do not think the process there is necessarily that long and that complicated. To say it might take 120 days—

Let me draw a little contrast here. I will skip, just for the purposes of example, to Bill 114. When the government brought Bill 114 up, the position

was, "We should be able to handle most of these cases within 60 days." Some might take longer. In fact, 22 per cent might take a lot longer, but the government's attitude was, "That's the way it goes."

Some of these cases might take a little longer to get through this process. That is true; it might take a little longer, but I think most could probably be dealt with fairly effectively and quickly. The harm that might be done to a case which might take a little longer to get through this process I do not think is any greater than the harm that might be done to thousands of employees who have to use the government process under Bill 114.

You may be comparing someone's business convenience or someone's convenience to make money with someone else's choice about whether he has a job or not, or lack of choice, or lack of ability to continue to be a contender in the job market.

To say there might be some diversity of views and, therefore, because there is diversity of views, it makes it very difficult to try to define tourism and a tourist industry and it makes it very difficult to try to define a cultural community or certain cultural practices that might be part of a Sunday commercial operation, to say that it is difficult cannot be taken as meaning, therefore, the province should fob it off on somebody else. Yes, it is difficult, but we make all kinds of difficult choices, all kinds of difficult decisions. I look at some of the stuff that is coming down the line from the Ministry of the Attorney General and it is going to be difficult. The Ministry of the Attorney General is not saying, "Let's throw it to the municipalities because it is difficult, because we can not achieve unanimous agreement among different parts of Ontario." You make the choice, as difficult as it may be, and you try to make the right decision.

It seems to me that the bill that we are faced with is not trying to make the choice. It is not trying to do any of that. It is trying to fob it off with all of the harm and all of the possible and probable, if we listen to the deputants who have appeared before us, consequences that we have heard.

This amendment, in my view, and I think I speak for Mr. Philip here, is an attempt to put a limit on some of those things. We think it is a reasonable and rational limit. We do not think the process that is involved here carries with it any more injustice, or any more difficulty or any more delays than are going to be encountered under the government's Bill 114. In fact, I think the injustice that might be encountered is quite a bit less than is going to be encountered under Bill 114, where you will have employees literally throwing up their hands and saying, "This piece of legislation is useless; we cannot use it," or employees who do use it finding they may have to go to a six-month wait to find out if their objection to working on Sunday is reasonable or not reasonable.

We feel that this kind of limitation, this kind of trying to delineate what is a viable or an allowable Sunday retail activity and what is not, is a good one. We support this amendment, we think it is a good amendment and we think the government should take a careful look at it.

Mrs. Cunningham: I would like to begin my response this afternoon by going back to the very beginning of my very first day here. I was, I think, received rather well at that point in time and I felt very much at home.

I would like to say to Mr. Kanter that I very much appreciate his remarks this afternoon. I have taken this seriously because I think it is a

big issue, and it is nice to know people recognize that from time to time. In this business, I do not think we do enough of saying: "You have done a good job, even though I do not agree with you." So I thank you very much for that, Mr. Kanter.

The Premier's words to me, on the very first day I was here, were to welcome me into the House and then move on to the Sunday shopping legislation and advise me that he felt that very shortly I would recognize the genius in this legislation. I will never forget that word because all summer long I have been trying to find even some common sense in the legislation. After concluding our public hearings, given what I have learned of the reasons for the tabling of this bill and the purpose as presented to us by the Solicitor General and the government, I cannot even see any any reason for this legislation at all.

1600

I can only say the government really does have a real hot potato on its hands. I do not know what the result of the dealings with this particular piece of legislation will be in the short term and I think I have predicted on a number of occasions what will probably happen in the long term.

Now I will make my remarks directly to the criticisms Mr. Kanter made, and I accept them. I think there are some I would agree with. If you are serious about looking at what I think is a compromise and breaking the impasse that we seem to have in this committee, I think you will be prepared to make some amendments to the proposal I have made today, if you are serious.

First of all, I think the words "shackles and restrictions" were excellent words when you referred to local autonomy. If that is how you describe it, it is great. I agree with you. That is exactly what I intended to do; in fact, you said it much better than I could. I will tell you why. I think when it comes to extension of Sunday shopping, we should be making very serious restrictions on municipalities. If you want to call it "shackles," that is fine by me.

My first priority, and I think the priority of the presenters to our committee, had a couple of very important—and I will again use Mr. Kanter's words—"values in mind." I think those values were, first of all, to protect the common pause day; second, to alleviate the potential domino effect; and thirdly, to recognize tourism and cultural interests as being extremely important in this province and the only reason for making any further exceptions or exemptions to the present legislation.

I thank you for that criticism, Mr. Kanter. I agree with you. I have been somewhat restrictive in my plan and it was extremely well intended.

The second criticism you made was the point that after the municipality makes a decision, if I believe in local autonomy, I should, therefore, have somewhat more respect for that municipal decision. Yes, I do agree with local autonomy and, as a local elected member of a school board for 14 years, I did not like the government mucking in my processes, to put it bluntly.

Quite frankly, I think the shoe is on the other foot this time. We have heard from the municipalities, and they have come here unanimously before this committee and almost unanimously in their own meetings and said, "Do not make us responsible for this decision of extended Sunday shopping."

Your second point is my concern for local autonomy. I have tremendous respect and admiration for local autonomy. I think it is extremely important. But on this issue, I think any extension of Sunday shopping is a responsibility of the provincial government. The municipalities have stated that as well and they are not particularly concerned about their local autonomy here. They have told us: "You keep it. We do not want it."

You said that ultimately a provincial body would be responsible for the final decision. Right on. That is exactly what I meant to say. I think that is respecting the wishes of the municipalities by throwing it back to the province. I am glad that you made those two criticisms because it gave me another opportunity to defend my position.

The third point you made was the makeup of the board as being diverse and ensuring that the intent of the legislation is upheld. I think the diversity of that board is probably a real asset to the possible decision-making. When it comes to saying, "I think it is extremely important that any board that has been given some guideline"—or framework, as you have stated time after time—"under which to make a decision," here you know very well that the framework is the tourism and cultural interests in this province. Those would be the only reasons that we would be looking for further exemptions. I think the makeup of this diverse board is indicative of the kind of representation we had before this committee.

I think one of the most important observations that we should make as a committee is the diversity and the willingness of all of these groups, churches, unions, small business, large business, municipalities—all 213 of them agreed—to assist us in the criteria and the process that we are talking about today.

I think their bottom-line interest was not to expand Sunday shopping any further than what it was already. Almost unanimously, they held that point of view. There were only nine that thought otherwise; out of 269, that is not a lot.

I have to tell you, if those people with those diverse interests came before this committee and were willing to assist us in a definition, I can assure you that they would be probably more than willing to take the responsibility for the decision-making as to whether the application before them fitted the intent of the legislation of this province, and that was to look at tourism and to look at whether it fitted the cultural interest. You can look to my motion for what I mean there.

The fourth point that you made is that you did not want public hearings. I did not think you thought that public hearings by this Rexboard were necessary and that they were probably too time-consuming. I think you went further to say perhaps that they were expensive, but you were very gracious on that point, so I will not dwell on it.

If you do not think that should happen, I have no problem with your amending this at all. I would even give you the amendment, and if you take a look at subsection 4(3), I would stop after "exemption board has 30 days to indicate to the said municipality whether or not" and I would change it to say "whether or not the application is accepted or rejected." I would therefore strike subsections 4(4), 4(5) and 4(6); and since you did not like the Lieutenant Governor in Council's being involved and my colleague Mr. Cureatz did not either, I would strike that and I would make the present subsection 4(6) subsection 4(4).

If you are interested—I do not want to confuse this debate by offering that amendment and prolonging these hearings—I would throw that ball into your court and say that would be the perfect amendment to meet your needs. I happen to think you made a very good point. Why do you not just take it and fly with it, because I happen to think it was observant; and I am particularly flexible because I want your support.

Your fifth point said, "In support of the extension"—I am sorry. You did not say that. It was my point there.

Your bottom line was that this was complex, unwieldy and potentially expensive. I just have to tell you, if you think this is complex, unwieldy and potentially expensive, you should look seriously at the implications of the amendments that you are making. As for protection of a common pause day, at least my amendments are saying that the potential of a domino effect and the importance of the recognition of tourism and cultural interest in this province happen to be part of the framework of what I am talking about.

Your particular amendments have no framework. Other than the exemptions that are in the present act, you are saying anything can go before a municipality and, therefore, if our amendment is complex, unwieldy and potentially expensive—I think the point was made by all the municipalities here that maybe we, meaning the provincial government, are not going to pay the bill but anybody who understands the funding around transportation, police protection or enforcement and the cost of child care—no, the majority of that bill is paid by the province and in fact we are forcing the municipalities to pay very large bills when the extension of Sunday shopping does take place as a result of your legislation. I am going to tell you right now that this is not complex, unwieldy and potentially expensive at all if one takes a look at your particular amendments.

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I would like to go back to square one and close with two statements, and I am finishing up now. In all fairness, at the beginning of these hearings, I was serious about looking at the unenforceability of the present legislation. Since the Solicitor General is here and since I have given an opportunity a number of times for the government to come forward with examples of this unenforceability, I can say only that no one has proven it to me. I will now take the position of the delegates or the witnesses who came before us and said the reason this particular legislation is unenforceable is because the government is not prepared to enforce it.

I admire the changes and the incentives to make the present act, by amendments in Bill 113, more enforceable. I am not arguing that point; I am just saying the present bill is enforceable. It will be more enforceable with the amendments. We will speak to that later. That was the first premise on which I went out on these provincial hearings and no one could show me anything over that period of time that told me the present legislation was not working.

The second one was the criteria for tourism, and I do not think you will ever live down the fact that you are not interested in getting input from the presenters, the witnesses. In fact, it is not an industry that is important enough to be recognized by this government, at least provincially, as being an extremely important part of the framework of this legislation.

I guess I would like to end my response to Mr. Kanter and to the

committee by asking the Solicitor General a question. My question will be very simply put.

Hon. Mrs. Smith: On a point of order, Mr. Chairman: I assumed instead that I would be given a chance to speak before I answered questions.

Mrs. Cunningham: Could I table my question? I am finished now.

Hon. Mrs. Smith: I have not started yet.

Mr. Chairman: Why do we not let the minister speak briefly and then you can ask the question.

Mrs. Cunningham: I would like to finish so the Solicitor General can have the floor, that is all.

Mr. Chairman: Okay.

Hon. Mrs. Smith: By all means. I am leaving in five minutes.

Mrs. Cunningham: I would like to finish with a question.

Mr. Chairman: All right. Go ahead.

Mrs. Cunningham: The last part of my statement is a question to the Solicitor General, and that is, what was the purpose of the public hearings?

Hon. Mrs. Smith: I am glad I have been allowed five minutes to speak at the end of a very interesting afternoon and I will try to be brief. In fact, if I am not finished in five minutes, you will get only five minutes' worth of wisdom and joy from me.

Mr. Cureatz: You should have heard me this morning.

Ms. Hart: We did.

Mr. Ballinger: You would have had more time if Mr. Cureatz had not taken three hours.

Hon. Mrs. Smith: I think my parliamentary assistant, Mr. Kanter, has expressed very well my major thought on this whole bill, that we are trying to express here a fact that Ontario is now a diverse province with many different groups reflecting a great diversity of cultural interests. It should not be ruled overall by the climate of Toronto telling up north what to do or vice versa. We recognize many different types of lifestyles existing, not only within the province, but possibly in smaller localities too, which we would expect councils to recognize within their own localities.

We recognize this diversity, we honour it, we want to cultivate it. We also recognize its economic significance to these communities. My PA has pointed out that the diversity of the province is in far more things than can be expressed in just tourism and culture if indeed you look at Sault Ste. Marie and what it would account for its openness under and then at Thunder Bay and why it has moved to some degree of exception and if you move to Harbourfront, which, if you have visited it, reflects the lifestyle, I think.

I myself, when I am stuck in my Toronto apartment on Sunday—which is not too often, because I try to get back to London—like to go to look at the

boats and look at the water, because I get tired of looking at my walls. That is something I do not necessarily feel in London.

Toronto has its own lifestyle. We have talked about Chinatown, as you say, and you have attempted to accommodate that by saying "particular cultural community." That is very well and good. Toronto is far more diverse than can be captured in this, and we recognize this diversity. We want to give the kind of freedom that allows this diversity to be expressed as it should be.

I therefore have a great problem in suggesting that we should have yet another local board in Toronto which is going to make all these judgements for all of Toronto rather than saying these people have elected their councils, they should take their councils seriously and they should put on to their councils people who respect their desires and lifestyle wishes for their community.

I think probably nothing has done more to move this province towards recognizing the importance of the councils, and maybe it will have an effect of having a bigger turnout for the city elections. That would be a very admirable thing. I have been on council. Councils have, by and large, been striving for more recognition of their importance. I want to stress this. They should have importance, they should exercise that importance and the voters should recognize that importance.

To discard them, as was done by the member from the opposition, by saying they will respond to who has the most money is indeed a terrible put-down. If that is the way it is, then let the city voters get out and change who is on the city council and get the people on to council who will respond to what they want their community to be. That is why we think it should be with the council.

I do not understand this board that is to be set up. I will not go into the details. I certainly do not want to take anything this vital away from councils that are elected and turn it over to the tourism board of Ontario, not at all. The structure in front of us says we should have representatives from six groups, yet there are only five people on the board. It says three of them should be permanent. They will be the first permanent people in Ontario, because all of our others rotate. I do not know which of the three should be permanent. Of the religious groups, I do not know whether we will rotate it among Jews, Hindus, Muslims and Christians or what the plan is there. To me, forget it all. Council is elected, council represents the people in the locality and council can make these decisions for that community far better than this peculiar board I see structured here.

I stay where I was on public hearings. We will discuss our public hearings presentation later, so I wait until such time as it is before you. I do believe the public hearings are a good idea. I think the way we have structured it, it is particularly done so it will not be expensive. It can in fact be done by a committee of council, in the usual way that council operates, at no expense or additional bureaucracy to the municipality. This is where the people can best be heard, as we all know, in their local council hearings. I stand by that, but it will come up under our own amendment.

With regard to appeal to cabinet, I think even now the member who put this forward agrees. Certainly, as a member of cabinet, I have no competence in judging how they should structure the lifestyle of these many communities around this province. If it were brought to me in cabinet, I would have to recall the words of ??Justice MacRae in the Supreme Court of Ontario decision

and say, ??"The municipality has spoken in sending this to us, and it is not up to me to substitute my discretion for its discretion."

Mr. Philip: Boy, we will remember that the next time we have an Ontario Municipal Board decision.

Mr. Cureatz: We will remember the no-confidence-in-cabinet part.

Hon. Mrs. Smith: As a city council member, I want to remind them that city councils have been moving more and more towards autonomy. Even the OMB is somewhat in question, but at least the OMB is set up as impartial citizens, not as interest groups.

However, we are certainly moving away from Toronto control to local autonomy at the request of the Association of Municipalities of Ontario in its official document as to its purposes and its constitution. However, these are my personal views. I have not, in this case, spoken for the government as a minister. They are my views. This is in the hands of the committee, as I have said before. I do not want my presence at any time to hold up the progress of the committee. It is in your hands. It is, through you, in the hands of the backbenchers of all three parties. I look forward to your decisions on these things. I have shared with you my views as minister as they relate to these matters. I leave it all to your own good judgement and I thank you very much for inviting me to be present.

As for the purpose of the committee hearings, which the member for London North (Mrs. Cunningham) inquired about, as in all committee hearings it is to address not the substance of the bill but the bill itself, to improve the bill, to make it more responsive to the needs of the party. I have invited input on many things, such as the public process. You have provided your input here. I have expressed my views on it. This was an interesting presentation. AMO was asked to put forward its views. I personally phoned Mrs. Brick and asked her to put forward AMO's views on what the public process should be. We did not hear from them, as I had hoped, but that was something we asked for.

As in all committee hearings, the purpose of the committee hearings is to put together amendments to improve the bill. They are not contrary to the bill and out of order. Therefore, I would point out that the purpose of committee is not to deal with contrary motions, although we were be glad to hear from you. The substance or principle of the bill is sent down from the House, but the principle of the bill is not the purpose of public hearings. The improvement of the bill is the purpose of public hearings.

Mr. Cureatz: We could debate that.

Hon. Mrs. Smith: The principle was established before the hearings.

Mr. Chairman: Thank you, Minister. We have unanimous consent to vote. I wonder, and I should have asked you at the time, are we content to stack the votes, in light of the factor that the final three are dependent upon the first one? This way, we can vote on all of them. Is it agreed that we have one vote for all the amendments? Do we have unanimous consent?

Agreed to.

Mr. Chairman: The committee is prepared to vote. Those in favour of the four amendments put forward by Mrs. Cunningham, would you please signify?

Mr. Cureatz: Recorded vote.

The committee divided on Mrs. Cunningham's amendments, which were negatived on the following vote:

Ayes

Cunningham, Cureatz, Hampton, Philip.

Nays

Ballinger, Chiarelli, Collins, Hart, Kanter, Sola.

Ayes 4; nays 6.

Mr. Chairman: It being almost 4:30, we stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 4:23 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Friday, October 7, 1988

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Ms. Poole

Collins, Shirley (Wentworth East L) for Mr. Keyes

Cordiano, Joseph (Lawrence L) for Mr. Chiarelli

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Smith, Hon. E. Joan, Solicitor General (London South L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, October 7, 1988

The committee met at 10:07 a.m. in committee room 2.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act.

Section 4:

Mr. Chairman: I recognize a quorum. We have two amendments to section 4. One of them is a government amendment and the other is an NDP amendment. I am looking for hands.

Mr. Philip: I have my hand up.

Mr. Chairman: I think with a photo finish, you might have squeezed in there, Mr. Philip.

I have looked at this amendment, Mr. Philip, and I have determined that the motion is not in order. It is out of order on the basis that it reverses the principle of the bill as set out in section 4. In second reading of a bill, the House adopts the principle of the bill, which is the underlying fundamental or primary element, intention or purpose of the bill.

If a question arises as to the principle of the bill, it is the responsibility—

Mr. Philip: Before you make a ruling, am I allowed to move the amendment? I think that is the normal procedure.

Mr. Chairman: You can move it.

Mr. Philip: Let me just find it first, among my notes.

I move that subsection 4(1) of the act, as set out in section 4 of the bill, be struck out and the following substituted therefor:

"Despite section 2, the council of the municipality may by bylaw permit retail business establishments to be open on any holiday"—

Mr. Chairman: That one has already been defeated, Mr. Philip. It is the Moscoe motion.

Mr. Philip: I just thought it was a good one to move again.

I move that section 4 of the act, as set out in section 4 of the bill, be amended by adding thereto the following subsection:

"No municipality shall pass a bylaw under subsection 1 until:

"(a) the member of the Legislative Assembly in whose riding the municipality lies in whole or in part holds a public meeting concerning the proposed bylaw and

"(b) a majority of the members of the Legislative Assembly referred to in clause (a) approve the proposed bylaw."

Mr. Chairman: As I was indicating, I find that the amendment is out of order on the basis that it reverses the principle of the bill as set out in section 4. In second reading of a bill, the House adopts the principle of the bill, which is the underlying fundamental or primary element, intention or purpose of the bill.

If a question arises as to the principle of the bill, it is my responsibility as chairman to rule on this. The primary element of this bill is the section which allows a municipal council by bylaw to govern opening or closing of retail business on any holiday. Erskine May states at page 556 of his treatise on The Law, Privileges, Proceedings and Usage of Parliament, 20th edition, "An amendment which is equivalent to a negative of the bill, or which would reverse the principle of the bill as agreed to on the second reading, is not admissible."

Since subsections 1(a) and (b) of this amendment, in requiring the approval of members of the Legislative Assembly of Ontario, have the effect of negating the ability of a municipality to act independently in establishing a bylaw, the passage of a bylaw becomes impossible without the consent of particular provincial members of parliament taking the authority out of the hands of the municipal council. That is my ruling. If there is no further—

Mr. Philip: May I speak to the ruling?

Mr. Chairman: No, you may not. It is not debatable.

Mr. Philip: Then I will challenge the ruling.

Mr. Chairman: The chair has been challenged. Those in favour of upholding the chair?

Mr. Philip: May I have a recorded vote?

Mr. Chairman: Yes, you may.

The committee divided on whether the chairman's ruling should be upheld, which was agreed to on the following vote:

Ayes

Ballinger, Collins, Cordiano, Hart, Kanter, Sola.

Nays

Cunningham, Hampton, Philip.

Ayes 6; nays 3.

Mr. Chairman: The amendment is defeated. We will now move on to the amendment proposed by the government.

Mr. Philip: May I ask you a question on your ruling?

Mr. Chairman: No, you may not. We move on to the next matter which is that of the government.

Mr. Kanter moves that section 4 of the act, as set out in section 4 of the bill, be amended by adding thereto the following subsection:

"(1a) Before passing a bylaw under subsection (1)"—

Mr. Philip: On a point of order: There is no rule that I know of that says that a member may not ask a question. It is not a matter of challenging a ruling; it is a matter of asking a question of the chair so that I can get clarification as to the bill.

Do I take it, since we have asked the minister and she could not answer as to what the principle of the bill is, that now you are saying the principle of this bill is that the government is giving up all of its responsibility to the municipalities, that the municipalities have complete authority?

Hon. Mrs. Smith: On a point of privilege: I have been misquoted.

Mr. Chairman: I think you have as well. My understanding is that it has been said numerous times, and as early as yesterday, that the principle of the bill was exactly what was in my ruling, so we will proceed.

Mr. Philip: I asked the minister several times initially on the first day as to what the principle of the bill was and she refused to answer.

Mr. Chairman: You are now debating the chair's ruling and it is not debatable. I am going to move to Mr. Kanter.

Mr. Kanter moves that section 4 of the bill, as set out in section 4 of the act, be amended by adding thereto the following subsection:

"(1a) Before passing a bylaw under subsection (1), the council of a municipality,

"(a) shall hold a public meeting in respect of the proposed bylaw;

"(b) shall publish notice of the public meeting in a newspaper having general circulation in the municipality at least one week before the meeting is to be held; and

"(c) shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed bylaw."

Mr. Kanter: I would like to speak briefly to this motion. The rationale of the bill is a provincial law requiring most stores to close, combined with a right of municipalities to change the provincial closing law to suit local needs.

As we have discussed many times, we believe that regional or municipal councils are the best judges of those local needs and attitudes. However, we feel that if municipal bylaws are to adequately and accurately reflect local

opinion, inhabitants of a municipality should be given an opportunity to make their views known. Therefore, we feel that this amendment really buttresses and adds to and strengthens the local option principle that we have introduced in this legislation.

The proposed process of public involvement, the approach we are taking, is based on the procedure of the Planning Act, which every municipal council in this province is familiar with. It is a process that is easy for council and citizens to understand and it will give a full opportunity for all interested parties to make their views known. As a former member of city council, I know that the minister and a number of people who are serving on this committee and many members of the Legislature are familiar with this process. More important than that, all members of city councils throughout the province are familiar with this process.

We did hear concerns at this committee about the current Retail Business Holidays Act. We heard the possibility that a council could open a municipality wide up under the guise of the tourist exemption without hearings. We also heard that many municipalities had a process in place and that there were lively and extensive debates in some councils, but that is not required, it is not a universal process, and we are concerned that everyone in the province who has an interest in this matter does have an opportunity to express his or her views on this issue.

These amendments would prevent the situation, which some people were quite rightly concerned about, where a Sunday shopping bylaw might be passed late in a meeting with a bare quorum of council present. We think it is both a positive improvement and also would prevent something from occurring which might be unfortunate.

A number of groups appearing before the committee have suggested a process along the lines of this amendment. I am not suggesting that these amendments address all the concerns of these groups. Indeed, we have a number of other amendments that address some of their concerns, but a number of groups do want an amendment along these lines, including, might I say, the Coalition Against Open Sunday Shopping, which purported to be an umbrella group of a large number of people who were opposing this legislation. They spoke quite strongly in their brief in favour of a hearing-and-notice provision along these lines. The Ontario Convenience Stores Association, I think, was the first group to come before us with a very positive and constructive suggestion along these lines, and there were a number of other merchant groups and church groups who support a notice-and-hearing provision along these lines.

I just want to make one comment in closing, and that relates to the period of time that we have suggested. We have suggested in our amendment that the notice shall be published at least one week before the meeting is to be held. I have received, as I believe all members of the committee have received, a letter from the Ontario Convenience Stores Association suggesting that might not be enough time.

Since I received their letter, I have checked the provisions of the Planning Act and practices, at least in the city of Toronto. I find that the Planning Act requires 30 days' notice between the time the notice is published and the time the meeting can be held.

We would certainly be open to suggestions to consider a further amendment, an amendment to our amendment, to increase the period of time. I

think we would be inclined to amend our amendment to require a 30-day period of time rather than one week, as in the written amendment.

I wanted to put it out as a suggestion to hear comments from all of the members of the committee, but clearly, the objective is to give people adequate notice before a meeting is held and then an opportunity to make representations when the meeting is held.

Those are my comments, Mr. Chairman. If you would like that amendment to our amendment in writing, I will certainly provide same, or perhaps the clerk could just make that change.

Mr. Chairman: All right. You have moved an amendment to the amendment. Mr. Philip has an amendment to the amendment. If you can write that out, we will need that in writing.

Mr. Philip: What is your amendment?

Mr. Kanter: The amendment would be to clause 4(1a)(b), "shall publish notice of the public meeting in a newspaper having general circulation in the municipality at least"—strike out "one week" and substitute "30 days"—"before the meeting is to be held."

Mr. Philip: That was one of the amendments I was going to move.

Mr. Kanter: We are ad idem for once. We are on the same track for once.

Hon. Mrs. Smith: You might allow them to move it.

Mr. Chairman: As the minister has indicated, do you wish to move that amendment?

Mr. Philip: I move that clause 4(1a)(b) be amended by deleting the words "one week" and substituting therefor "30 days."

Mr. Chairman: All right.

Mr. Kanter: I will accept that for the government.

Mr. Philip: I further move that the following clauses be added:

"(d) a notice announcing the council's decision to review the Sunday shopping issue and providing details of a public meeting must be sent to all persons who have asked to be notified about any proposed changes in Sunday shopping bylaws.

"(e) requirements for the contents of the notice and its circulation should be set out in regulations by the provincial government or a designated provincial review body."

Mr. Chairman: Are you putting that in writing?

Mr. Philip: Yes.

Mr. Chairman: I wonder if we could have a recess for 10 minutes to allow the clerk to produce copies of that for all members. Perhaps in that

time, as well, you could be finishing the writing out of the motion. We are in recess until 10:45 a.m.

The committee recessed at 10:25 a.m.

1045

Mr. Chairman: We are back, I think. My light is not on. It does not work. My light is out. What else is new? You have the written amendment before you, which Mr. Philip has moved.

Clerk of the Committee: One correction.

Mr. Chairman: Oh, one correction, the clerk indicates. What is the correction?

Clerk of the Committee: The first line should read, "The amendment to section 4 of the bill as set out in...."

Mr. Chairman: Okay; rather than "by." Everybody make that correction. All right.

Hon. Mrs. Smith: I did not get one.

Mr. Chairman: Do we have another one there?

Clerk of the Committee: Oh, I am sorry.

Mr. Chairman: Okay, Mr. Philip, would you like to continue?

Mr. Philip: Shall I read it into the record again, then?

Mr. Chairman: No, I think it has been read into the record.

Mr. Philip: We have done a little bit on the wording.

Mr. Chairman: Okay.

Mr. Chairman: Mr. Philip moves that the amendment to section 4 of the act, as set out in section 4 of the bill, be amended by striking out the words "one week" in clause 4(1a)(b) and substituting therefor "30 days" and that the following clauses be added:

"(d) shall publish a notice announcing the council's decision to review the Sunday shopping issue and providing details of a public meeting and shall send copies of the notice to all persons who have asked to be notified about any proposed changes in Sunday shopping bylaws.

"(e) shall follow the requirements for the contents of the notice and its circulation as set out in the regulations or a provincial review body designated under this Act."

Mr. Chairman: Perhaps, since you have proposed an amendment to the amendment, you would like to speak on the amendment to the amendment.

Mr. Philip: The concern expressed by numerous groups throughout this province as we went around, particularly the municipal councillors but some other groups as well, was that municipalities are much more vulnerable to

pressures from large developers and would-be shopping mall owners than would be a provincial government that is sitting centrally, and therefore, does not have all of its future vested in one particular community.

The proposal was made by a number of municipal councillors that were a large developer to suddenly come to a municipality and say, "We are willing to put in a major shopping centre, and this would reduce your taxes considerably because it would create this much tax revenue," that council might be under considerable pressure to do this and to go along with what they wanted.

It is important that if the government, as it appears to be, is giving up all of its responsibilities for Sunday shopping to the local municipalities, at least the local citizens and small businesses and other people who have an interest in that community have an opportunity to put pressure and have their views made known.

Certainly that has been the case in any of the instances we know of where the tourist exemption has been used under the present legislation. There may be some abuses. The minister has been asked several times to give us cases of abuses. She has failed to produce any of that. Indeed, the municipalities have asked her to produce cases. She has not come up with the horror stories she likes to talk about in generalities, but not in specifics. In fact, before the legislation was introduced, she could not even produce a list of where the tourist exemption was being used.

1050

Mr. Ballinger: You have been trying to get that in for two days, have you not?

Mr. Cureatz: Now that she is here, he finally thought he could get a few whacks at her.

Hon. Mrs. Smith: He did that to me the last time I was here. This is—

Mr. Chairman: We are not in a locker room. Let's try to keep a little bit of order here. Go ahead, Mr. Philip.

Mr. Philip: Mr. Cureatz, I always appreciate your assistance.

Mr. Cureatz: That is right. You need it.

Mr. Philip: Particularly—

Mr. Chairman: Do not provoke. Do not interject. Go back to sleep.

Mr. Cureatz: I just woke up.

Mr. Philip: I only wish we had been as well behaved as you are now when you were Deputy Speaker, so that you could have experienced it.

Mr. Chairman: Back to the amendment.

Mr. Cureatz: I will behave.

Mr. Philip: The purpose of the notice then, to give the first section of changing it to 30 days, is that frequently people are away. They

may be away on business at a time in which a particular decision may be pending.

I have moved similar amendments in terms of property tax assessments and appeals of assessments, where in the case of condominiums, for example, they simply do not have the time to bring together their boards and make a proper appeal within the time frame under the present legislation. I find that is terribly unfortunate. People should have a right to make their views known and make their appeals.

So this extends it from one week to 30 days. It was a proposal that we received from the Ontario Convenience Stores Association and I think it makes some sense. In terms of the publishing of notice, that is again related to the right of citizens to know when major decisions are being made affecting their lives and the purpose of the notice is to give them an opportunity.

Often the groups, such as the Ontario Korean Businessmen's Association or the Ontario Convenience Stores Association or the business improvement areas, require some time, and indeed, may wish to hire legal counsel to present their views. We have seen that before this committee, where groups of people who are affected may wish to combine and this all takes time.

They do not have the resources that are available perhaps to the Hudson's Bays or Cadillac Fairviews of this world, and therefore, they need some time to prepare their opposition to whatever may be directly affecting them.

That is the purpose of clause 4(1a)(d). The purpose of clause 4(1a)(e) is simply that people should receive notice and that there should be regulations that are fairly clear as to the process that will be followed. In other words, if we are going to have clause 4(1a)(d), which requires that anyone who is concerned about an issue is advised, then we should spell out exactly the method by which they are going to be advised, and the other ground rules.

I offer these as constructive changes to the present legislation. I still think section 4 is terribly flawed and an abrogation of the provincial government's responsibility, but none the less, I hope it will improve it in some way.

Mr. Chairman: Thank you for speaking to the amendment to the amendment. I have some problem with clause 4(1a)(e) in that it refers to a provincial review body, which would appear to be addressing it or going against the principle of the bill as previously enunciated in my decision with reference to your previous amendment.

Mr. Philip: Mr. Chairman, are you suggesting that the principle of the Municipal Act is—

Mr. Chairman: Sorry, the clerk has drawn to my attention that is referable to clause 4(1a)(d), which is the notice, so let me recant that. Does anyone wish to speak to the amendment?

Mr. Ballinger: I asked if I could speak to this. In this process, I guess the government amendments that have come forward, clauses 4(1a)(a), (b) and (c), especially with the amendment to "30 days" now, sufficiently satisfy the concerns that have been expressed before this committee.

I have a couple of points with respect to Mr. Philip that bother me and are the reason I will not be supporting the amendment. I guess it is my municipal background. If there is one thing that has concerned me more than anything through this process, it is the number of delegations where people believe that a decision like this is too great or too responsible for locally elected people to make.

I am absolutely amazed and was amazed every time I heard that before this committee from certain individuals, that this particular decision was far too great, as was the impact on society as whole, that it should not be left up to the local municipal politicians. I could not disagree more. In fact, some of the best decisions I have seen have usually come at the local level, whereby those people who are duly elected to represent their communities know what is best.

Mr. Philip, when you chat about how one lets someone know what is happening, the newspaper advertising has always worked very effectively for a whole host of issues as they relate to a municipality. Municipalities all operate under different rules, because they all are different. Some automatically will notify in writing those people who have indicated to them, and some will not. Quite honestly, I think it is the responsibility of the municipality to make those kinds of decisions.

Can you just imagine the scenario in the community, let's say, that is discussing opening for Sunday shopping, that they present a brief to the council with a petition with the name of everyone in the entire community on it and then ask the municipality to circulate in writing, to each and every household, when it is going to hold the meeting, when in fact, between the local representatives who are duly elected and the local newspaper, everybody in the community will know exactly what is transpiring?

I just think we are encumbering the process. I think clauses (a), (b) and (c) happily cover the direction for the local municipality.

Mr. Philip: May I respond to Mr. Ballinger's comments. I do not know an awful lot about your riding, but I do know something about small towns in Ontario and some of those ridings, because I was director of leadership training for the Ontario Federation of Agriculture before I was elected. Therefore, I have been in a lot of the communities.

However, the ridings Mr. Kanter and I represent have quite a different kind of situation, I think, than many of the small towns in Ontario—

Mr. Ballinger: But you are at the regional level.

Mr. Philip: —or even the regional governments have. I think the differences are that in most of the communities you have maybe one or two, at most, major newspapers. In many of the communities, there is one language spoken, English, and most people are, if not Anglo-Saxons, then at least generally of Anglo-Saxon background.

1100

What you are talking about in the large metropolitan communities, or indeed in many of the northern communities or even southwestern Ontario and some of those communities, are large immigrant populations. Many of the merchants are working 12 hours or 14 hours a day as it is. You have a multiplicity of newspapers, a multiplicity of media, and I suggest to you that

the ways of communicating with those people is often more difficult. I think they make for more interesting communities in many ways because of the cultural mix, but it is a bigger challenge.

Therefore, I do not think you can impose on them the kinds of requirements that might work in the riding of Northumberland, where you have maybe three major newspapers and if any council is sneezing, it is going to make it into the Campbellford Herald and everybody reads the Campbellford Herald once a week. It is a different kind of community.

In my community, I am sure a large number of people do not read any newspaper. Many of them get their news by watching channel 11, which is Hamilton, because for whatever reason, that style of broadcasting suits their interest and they do not watch a Toronto channel. I know that from talking to them, because any time I appear on channel 11, I get a number of my constituents who say they saw me on the news. I say, "Oh, do you usually watch channel 11?" and they say, "Yes."

Mr. Cureatz: "And we'll never vote for you again."

Mr. Chairman: With a politician on television, you can shut him off.

Mr. Philip: Any time I appear, it seems to increase my vote, and if you look at the history of it, you can see—

Mr. Cureatz: The viewing rating is going up; CHCH-TV goes down.

Mr. Chairman: Mr. Cureatz—

Mr. Philip: It is channel 36 that has gone down because of the member for Peterborough. They cannot understand why anybody would go on TV and flap his arms all over the place like Donald Duck and call himself a parliamentarian.

Mr. Cureatz: Who could that be, Peter Adams?

Mr. Ballinger: The arms flap just in co-ordination with his lips.

Mr. Chairman: Can we return to the amendment to the amendment?

Mr. Cureatz: Coming from a guy whose colleague brought in a duck and called it a chicken.

Mr. Philip: It is the first time a politician has ever invented a perpetual motion machine.

In any case, as I was saying when I was interrupted so rudely by my colleague, whom I have great affection for most of the time—there is one good thing I can say about Mr. Cureatz; I cannot think of it at the moment.

Mr. Cureatz: Well, I cannot write it down.

Mr. Philip: Mr. Cureatz's speeches remind me of the top of my desk right now.

Mr. Cureatz: No one seems to mind and we have to drag out the time.

Mr. Chairman: All right, playtime is over. Can we get back to the amendment?

Mr. Philip: The great advantage of the difference between the top of my desk at home and Mr. Cureatz's speeches is that I have a cleaning lady who can clean up the top of my desk, tidy up the top of my desk, but no cleaning lady could possibly tidy up his speeches.

Mr. Chairman: Proceed, Mr. Philip.

Mr. Philip: Oh, yes; okay. I was just working on my next introduction to the Liberal caucus retreat, trying out a few of the lines here so that I can do another number for Mr. Ballinger.

Mr. Chairman: Are you finished with speaking to the amendment?

Mr. Philip: I would like to listen to the comments of the other members, and then I will no doubt want to comment on the comments.

Mr. Chairman: Mr. Cureatz, you do not have to stand up. I am not sure Hansard can get you.

Mr. Cureatz: I have been sitting in a car all morning.

I want first to say to you, Mr. Chairperson, to all my Conservative colleagues in attendance—

Mr. Ballinger: All one of you.

Mr. Cureatz: Wherever she is. Besides, for getting her elected in London North—there is my NDP colleague, the official opposition.

Mr. Philip: If it were not for Sunday shopping, your colleague would not have been elected in the first place.

Mr. Cureatz: She has told us that so often, even you are starting to believe it. She has not convinced me on that one. She got elected because there are so many damned Liberals, the people of London North were sick of them. To all my Liberal colleagues—

Mr. Philip: I turned out a press release on that. It was a scoop for the London Free Press yesterday. "Dianne Cunningham got elected thanks to Sunday shopping, MPP Ed Philip says."

Mr. Cureatz: —to the clerk, to our research officer, to Hansard, to you, Madam Minister, I want to tell you this is a great amendment to the amendment and I am supporting it.

Mr. Kanter: I thought we were making progress. I was concerned we might be backsliding. I hope we continue to make progress. I want to speak very briefly to back up the comments of Mr. Ballinger on our side.

I wanted to speak because Mr. Philip was referring to a Metro sort of riding, and I represent a riding, as he does, in Metro. Yes, it is true that there is a great diversity of population in the Metro area and many media sources:

I just want to reiterate the fact that this is a mandatory provision.

Every council must do this but we are certainly not restricting the ways and the forms in which they do it. I know, as a former member of Toronto city council, that we tried to communicate important messages in five or six different languages. I certainly think that is very helpful in a community like this. I would point out that the same problems Mr. Philip refers to of language and understanding would not be helped by sending a notice presumably in English, unless he is going to start with endless complications, to all persons who have asked to be notified.

I know we have all had the experience as representatives in the Metro Toronto area of constituents getting notices, whether it is about property taxes or other matters, that people do not understand. The problem is a general one. I think it is up to the local municipality, the area municipality to address it in a way appropriate for that community.

I am concerned about the "notice to all persons" provision. If you had a write-in campaign or petition or something of that nature, if a single person was not reached, the address was incorrect, the postal code was incorrect or the post office somehow failed, I would be concerned about the legal implications of that.

With respect to requirements by regulation, I think municipalities are familiar with their obligations under the Planning Act and I think, as Mr. Ballinger said, they would resent any sort of orders as to how and what size print something would appear in.

In the unlikely event, and I think it would be unlikely, that a municipality would abuse or misuse its responsibility if it were to print it in an abnormally small type or an obscure journal or something like that, I think that would easily be grounds for appeal to the courts. I think we are sending a strong message to municipalities about what they must do. I think we have to leave them some authority as to the details of how they carry it out.

I would urge members certainly to support the 30-day amendment—it is very reasonable—but not to support clauses 4(1a)(d) and (e) in Mr. Philip's motion.

Mr. Chairman: I am going to give Mr. Philip an opportunity to speak. Before we go further, there is a difficulty. I gather your intention was to move the 30-day amendment as a separate amendment and then the other two as a separate amendment.

Mr. Philip: Each of them is separate.

Mr. Chairman: Okay. There are three separate amendments.

1110

Mr. Philip: Unfortunately, Mr. Kanter has brought up what I think are spurious arguments. In the first place, the whole argument about it being thrown out somehow if somebody's postal code were wrong and he did not receive a notice is absolute nonsense.

We know the tribunals that are already making decisions have constantly made decisions based on the argument that the applicant had taken reasonable steps to inform that one would expect in a civilized society, and therefore the idea that somehow somebody had a wrong postal code, as long as everyone else was informed—we have had this with the Residential Tenancy Commission on

numerous occasions, where one person says he did not get a notice. Because there seemed to be proof that the landlord advised everyone else in the building, it is therefore simply assumed that one tenant not receiving it was not grounds to throw out the whole hearing or to stop the hearing.

Basically, what this notice does is make sure that some of the groups that are representing people are informed. We have had cases. The argument that somehow because something goes out in English, people are not going to understand it anyway is really an incorrect assumption. The assumption of this amendment is that at least groups will receive the notice.

Groups do deal with notices from the government. If they do not understand all the implications, they go to lawyers or other advisers or they go to their MPP in many cases, at least in my riding, or to their local councillors and say, "What does this mean?" I get people coming into my office all the time. I say, "Heck, I will call the councillor and find out what it means."

Mr. Cureatz: Call the minister.

Mr. Ballinger: Are you getting the feeling that this is like the last day of school?

Mr. Philip: I had one yesterday. I said: "Gosh, I do not know what this means or what this is all about. This is something the police are going to do." I gave it to the Solicitor General (Mrs. Smith) and she said: "You have to be kidding. Are they planning on doing this?" Not only that, but she stole my letter. I still do not have it back. I think I am going to have the police charge her with theft or something or other.

Hon. Mrs. Smith: Do you think you will be able to read it?

Mr. Philip: I am sure I will get it back and I am sure she will find out what is going on.

I am saying that what we are trying to do is make sure that interest groups are told, that ratepayers, business improvement areas, church groups and other groups that have been presenting to us on behalf of either side of this issue over the last few weeks are at least going to get a notice, and also some interested individuals who feel particularly strongly about an issue.

Last week, we had Mr. Barr, who lives down the street from me. I thought he made a fairly good presentation. He is interested in the whole issue of Sunday shopping, because he has worked with young people and families and feels strongly about the issue.

You notice that it says notices will go out only to persons who have asked for them. If a person is going to have the initiative to ask to be notified about a particular issue, then obviously (1) he must have an interest of some sort in the issue and (2) he must be at least articulate and literate enough to have thought through some points of view on the issue or he would not ask to be put on a mailing list. That is all this asks for.

Sure, I know if you send out things to everybody on the street, a number of people will throw them out and a number of people will not read them, but if someone takes the initiative of putting himself on a mailing list then the chances are fairly high, since the only way he gets on that list under this section would be for him to apply, that he must have some interest in the

issue. Therefore, he will read the literature or whatever else comes out on that issue. So I suggest Mr. Kanter's arguments do not have any merit whatsoever.

Mr. Chairman: We are ready, I gather, to deal with Mr. Philip's amendment. We will deal with the amendment to the amendment to the amendment first. Mr. Philip has indicated that he is treating them separately, so we will deal first with the amendment to the amendment that Mr. Kanter proposed under clause 4(1a)(b), changing the words "one week" to "30 days." Those in favour of that amendment?

Mr. Cureatz: Wait a minute.

Interjection: Are we all voting for it?

Mr. Cureatz: Are we all in favour of it? Am I in the right committee?

Mr. Chairman: Carried.

Mr. Cureatz: Well, I am against it.

Mr. Chairman: Oh, opposed? Mr. Cureatz. Okay.

Motion agreed to.

Mr. Chairman: We are now dealing with—

Mr. Philip: Is it permissible for me to move an amendment to that amendment by changing the number "30" to "60" now?

Mr. Chairman: No.

Mr. Philip: We are making some progress then. I figured that I had moved them 30 days, I might move them another 30 if I moved a second amendment.

Mr. Chairman: It will go down in history as unanimity on one issue.

Do you wish to deal with clauses 4(1a)(d) and (e) separately, or can we stack the vote on (d) and (e)?

Mr. Philip: Deal with them separately, and I ask for a recorded vote on that.

Mr. Chairman: Okay.

The committee divided on Mr. Philip's amendment to clause 4(1a)(d), which was negatived on the following vote:

Ayes

Cunningham, Cureatz, Hampton, Philip.

Nays

Ballinger, Collins, Cordiano, Hart, Kanter, Sola.

Ayes 4; nays 6.

Mr. Chairman: We will deal now with clause 4(1a)(e), the amendment to the amendment to the amendment set out in the clause (e) of Mr. Philip.

The committee divided on Mr. Philip's amendment to clause 4(1a)(e), which was negatived on the following vote:

Ayes

Cunningham, Cureatz, Hampton, Philip.

Nays

Ballinger, Collins, Cordiano, Hart, Kanter, Sola.

Ayes 4; nays 6.

Mr. Chairman: The amendment is lost. We will now deal with the amendment as amended.

Mr. Hampton: I would like to propose a further amendment to the main amendment at this time.

Mr. Ballinger: And I thought you were sleeping.

Mr. Chairman: We will need it in writing, Mr. Hampton, and we will have to get copies for the members.

Mr. Hampton: If I could set out generally what that amendment would be, it would be generally that assuming the process that a bylaw is passed which introduces some sort of Sunday shopping, once it is passed, any person may appeal it by filing an appeal with his municipal clerk within 35 days of the passing of the bylaw and the municipal clerk will then forward the appeal to the Ontario Municipal Board or to another designated review body.

Mr. Chairman: I think, first of all, Mr. Hampton, that to put that in this section would be very difficult for people to understand. I defer to legislative counsel. You normally have an appeal section separately.

Miss Mifsud: The opening words are "before passing a bylaw," so this section is dealing with the requirements that council must do before passing a bylaw.

Mr. Hampton: What I would then propose is that if council passes a Sunday shopping bylaw—

Mr. Chairman: Could I suggest that if you are concerned about passing or placing some form of an appeal in the bill by way of amendment, our passing this at this time does not preclude you from doing that. Perhaps you would like to consider that and bring it in later.

Mr. Hampton: I would argue that the question of an appeal, even if that appeal is perhaps to a special committee of the local municipal council, or as we would propose, to the OMB or another such body, necessarily follows from the possibility of passing the bylaw.

Mr. Chairman: I offer this as a suggestion. I think legislative counsel has addressed that. It would not make any sense to have it in this section. It might make sense to have it as an independent section, which is

normally the case when there is an appeal to another body. I think to put it in here would not make any sense. You would have an opportunity as well to think about it and put it in writing.

1120

Mr. Hampton: I would like to hear from legislative counsel on that one.

Mr. Chairman: All right.

Miss Mifsud: In this specific amendment they are talking about, they are dealing with what council has to do before passing a bylaw. What you are suggesting is some activity that has to be carried on after a bylaw is passed; there is an appeal of the bylaw so they can revoke it. We can do that in a separate section, a separate motion, but I do not think it fits into this amendment language-wise.

Mr. Hampton: Okay.

Mr. Chairman: Anybody else wishing to speak to the amendment to the amendment?

Mrs. Cunningham: Which one are you talking about?

Mr. Chairman: We are talking about Mr. Kanter's amendment, as amended by Mr. Philip. We are dealing with that.

Mrs. Cunningham: Are we talking about the motion then?

Mr. Chairman: No, we are talking about the amendment that Mr. Kanter originally moved and that was amended by Mr. Philip in clause (b) to change it from a week to 30 days.

Mrs. Cunningham: So we are just voting on the 30-day thing now?

Mr. Chairman: No, we just voted on that. We are voting on the whole thing as amended.

Mrs. Cunningham: Okay, I want to speak to the whole thing.

Mr. Cureatz: We are not on the whole thing yet.

Hon. Mrs. Smith: Yes, we are.

Mr. Chairman: Do you want to speak to that, Mrs. Cunningham?

Mrs. Cunningham: No, I want eventually to speak to the entire motion as amended.

Hon. Mrs. Smith: Is that not what she means?

Mr. Chairman: No, she wishes to speak to the whole thing when it is passed.

Hon. Mrs. Smith: I just do not want a point of order.

Mrs. Cunningham: I do not want to miss my opportunity. I am taking direction from the chair.

Hon. Mrs. Smith: Will you show her what she is voting on?

Mrs. Cunningham: I walked out.

Mr. Chairman: I think what she wants to do is speak to the section when it is amended.

Mrs. Cunningham: What are we voting on?

Mr. Cureatz: The NDP—

Mrs. Cunningham: We voted on that.

Mr. Cureatz: Right.

Mrs. Cunningham: We are now voting on this.

Mr. Cureatz: We are not voting on the whole thing.

Interjection: Yes, we are.

Mr. Chairman: No, we are not.

Mr. Cureatz: Mr. Hampton's amendment—

Mr. Chairman: Mr. Hampton has agreed to withdraw that motion. You want to speak to—

Interjections.

Mr. Chairman: I think the Hansard people are probably twirling in their chairs in both instances.

Interjections.

Mrs. Cunningham: You advised him that there was a better place to put it.

Mr. Chairman: I did not. Legislative counsel did.

Mrs. Cunningham: Legislative counsel.

Mr. Chairman: Go ahead, Mrs. Cunningham.

Mrs. Cunningham: All right, here we go.

I did make some comments on this particular amendment yesterday in my own presentation. I suppose basically this is the amendment that, to me, is offering to the witnesses some level of appeasement. Although the Liberal members of this committee have stated in an ongoing way over the course of these hearings that the principle of the bill is non-negotiable, to use the words of many of the Liberals as we went from town to town and city to city, I do not think the public understood that. Certainly, members of the opposition found it rather difficult to believe as the hearings proceeded. Maybe that is something we would have treated differently had we understood that the

majority of the public came to speak to the principle of the bill, not understanding it was non-negotiable. In fact, we had some arguments about it.

This particular amendment is the only amendment the Liberals are making that would affect the principle of the bill at all. I said yesterday, and I will say it again today, that I am a person who believes very much in a public participatory process. I think you stated yesterday that you are very much concerned about the autonomy of local government. I think local governments are smart enough to make their own rules. Mr. Kanter, in his statement this morning, talked about the rationale of the bill, and his first statement was that this provincial law will regulate most stores to close. Quite frankly, we do not believe that. We think that with the passing of the buck back to the municipality, that is not a statement that any member of this government should be making, because there was that opportunity in this particular legislation, of course, to ensure that, as far as possible, most stores would be closed.

We dealt with the amendment from the New Democratic Party yesterday which would ensure that, and it was defeated by the members of the Liberal Party on this committee. We further dealt with another amendment that the Progressive Conservatives made and that I presented, which the members of this particular committee defeated. Those were the only two opportunities that I could see on this most important section to ensure what Mr. Kanter stated, that most stores will remain closed. That is not a fact.

It is not a fact and it is made very clear to me that it is not a fact because now we are saying that anybody else who wants to open can go to the municipality and, if you are really concerned about it, you can have a public hearing, and this is the nature of the public hearings.

First of all, I object to our having to write a municipal process into a bill at all if you really believe in local autonomy. I was advised by the Association of Municipalities of Ontario that most municipalities do this already. Where in fact I stated yesterday any part of the existing legislation has been challenged in the court, it is only where municipalities have been involved that the present law has been upheld. So everybody knows that this is a process that is taking place if people want to make certain in further opening on Sunday that they want to have a case for themselves that also cannot be challenged or that can at least be won in the courts.

To strengthen the local option principle, as Mr. Kanter stated this morning, if nobody wants it, who cares if we strengthen it? I do not care; the public did not care. To quote from the Coalition Against Open Sunday Shopping, it is ridiculous. Certainly they were talking about a public process under the existing legislation, which is working now, which is supported by anybody who wants to further open their stores on Sundays. It is there now; this is not new.

CAOSS was only speaking to something that is working under the present law. To put it in the context of being supportive of Bill 113 is, to say the least, tremendously misleading.

Mr. Ballinger: Oh, not at all.

Mrs. Cunningham: That is misleading on behalf of CAOSS, and if you want to ask them, you can ask them yourself.

Mr. Ballinger: That is not true.

Mrs. Cunningham: We spoke yesterday and again today with the executive director of that group.

Mr. Ballinger: You cannot talk in both directions.

Mr. Cunningham: I will tell you right now that if you want to take the time to do the work that we have done, maybe you would be better informed, Mr. Ballinger.

Mr. Ballinger: I am quite informed.

Mr. Cureatz: He is just a funster.

Mr. Chairman: Through the chair, Mrs. Cunningham, and you will not evoke a response.

Mrs. Cunningham: On the other issue, or the other example that Mr. Kanter used, the convenience stores spoke strongly to this. Yes, they did speak strongly to this, and they also spoke in the context of public hearings under the existing legislation, which they supported, very much so.

What they are very much concerned about is that now the municipalities can close down their little corner stores. So we spoke to them yesterday, and I am very much aware of the letter. The letter was made as a last-ditch attempt to polish something that they prefer would not be necessary at all. In the very odd instance where municipalities are not holding public hearings, I suppose this particular direction from the province would be helpful. I cannot imagine anywhere that this is not happening now and I would like someone to prove it to me.

About this full opportunity for public input, I have to say that we went out to the public for some seven weeks for this full opportunity for public input, and where did it get them? Nowhere, absolutely nowhere. We did not have to go out to the public to discuss the size of a drugstore or the amount of the fine or whether stores should be roped off. You would have had unanimous consent of the opposition members of this committee that those were issues we could have dealt with at a regular hearing of the committee here in Queen's Park.

1130

The amendment is the direct result of some 18 questions Mr. Kanter asked, and only two witnesses agreed. We did our research on this last night knowing that we would be speaking to it today. Eighteen times Mr. Kanter or a member of the Liberal Party asked the witnesses if they would like to have some public hearings. Most of them brushed off the question as being window dressing, to put it bluntly, and two of them thought it was a good idea standing on its own. This is not anything the public came here on its own and requested, except in two instances. You can do your own research, and I stand to be corrected.

Mr. Ballinger: It is a result of understanding the issue.

Mrs. Cunningham: Mr. Chairman, on the point of understanding the

issue, if the public understood that this government— I can see you are getting angry again.

Mr. Chairman: No, I am not. I would like you to address this, not have Mr. Ballinger baiting you.

Mr. Ballinger: I apologize, Mr. Chairman.

Mrs. Cunningham: It is not easy. He sits right across from me moaning on and on and on.

Mr. Ballinger: It is not easy to sit here and listen to all that stuff.

Mrs. Cunningham: He does not sit in his office trying to analyse the information from the public, because he does not have to. I do, in my role as a true representative of the public who listened to the witnesses.

Mr. Chairman: Go ahead. You have the floor. Do not pay any attention to the interjections.

Mrs. Cunningham: It is my responsibility to try to persuade the Liberal majority otherwise, and I am trying to do that, believe it or not. My colleague would say I am too intense. I do not think anyone can be intense enough when it comes to the effect of the quality of life this legislation will have.

Mr. Ballinger: I am going for a coffee.

Mrs. Cunningham: To try to get back, I was speaking to the point of full opportunity that Mr. Kanter made. I would like to put that in the context of local autonomy and the rights of municipalities to make up their own minds about their own processes. In my experience as a local representative on a school board, we very much disagreed when the province came in and told us what kind of process we should use.

This is yet another example. The goody-goodies up here in Queen's Park are trying to tell the municipalities what to do when the goody-goodies up here at Queen's Park feel like it. On the other hand, when the municipalities come to us and say, "We don't want this legislation," the goody-goodies turn around and say, "You got it." That is what this is all about. That is what this particular amendment is about. It is an amendment to section 4, which nobody wants, the local option. That is why I am speaking at length to it.

I really object to saying that many suggested the process all along, and I have already spoken to that, Mr. Kanter. We went through all the briefs on that on an ongoing basis and checked our research. By the leading questions that were asked, people were coerced into answering the question. Who in his right mind would say, "We're against the public process"? Nobody in his right mind would say, "We're against public participation." We have had public participation all summer, and absolutely no Liberal that I know of has been listening.

I would like to close my remarks on this motion as put forth by the government to say that, in spite of the fact that we all agree with public participation, I think this particular section is the responsibility of the municipality. I think it is something that is already happening and I think it

does not answer the concerns of the public. I said yesterday it is redundant and I will say that again today.

I think the real issue here is that it does not solve one problem which was presented to us: If some big retailer, the Bay, comes to the municipality and says, "Would you agree with us that we can open our stores on Sunday?" and the municipality says, "No, you can't open your stores on Sunday," that is no different than it is now. If it says, "Yes, you can," right now, if it does not meet with the intent of the present legislation, meaning tourism, we close them down.

With this new Bill 113 and the lack of that framework, the Bay opens. There is no criterion this province has suggested, would approve or would agree to except to open everybody up, and that is fine with Ontario. Now the public has to rely on its own municipalities to set a standard and the tone for this province.

With the kind of influencing going on in municipal politics right now, which is much closer to home than us, I think the chance of that having any long-term effect at all is negligible, and I predict that stores will begin opening within the next five years in this province.

Mr. Chairman: Any further members?

Mr. Cureatz: Mr. Chairman—

Mr. Chairman: I think Mr. Philip had indicated—

Mr. Philip: I am willing to allow Mr. Cureatz to speak. That will give me some time to finish my press release on the previous amendment.

Mr. Cureatz: I am just astounded, first, that Mr. Philip's original amendment to the government amendment was turned down. By the way, my colleague was absent when I gave my other long-winded speech earlier this morning.

Mr. Chairman: Are you going to repeat it for her?

Mr. Cureatz: That was the best she could do. Is that it, what you did? Five minutes and boom? Now I have to carry it up to noon? Is this what you are doing to me? You are leaving and I am going to be stuck here until 4:30? Thank you. I really appreciate that.

I want to talk to our no-name Liberal over there. It is sort of like Loblaws. Do you know the Loblaws commercials: no-name products? I want to say to "it" over there that I always thought you were a person of some sensibility—

Mr. Chairman: Mr. Cureatz, through the chair.

Mr. Cureatz: Here we are with this particular motion, this domineering amendment to Bill 113, section 4. What do I see? To my disgust, once again, the large, tyrannical Liberal government attempting to crush the minority, attempting to put us in our place.

I remind you that I, too, was elected in the last election and have an important role to play in speaking against section 4, this proposed amendment to Bill 113. Of course, I have not heard a peep from our no-name Liberal over

there. I do not even remember his being on the committee. Have you been on some of our travels? I think I should just go on a little tour with you—

Mr. Chairman: Mr. Cureatz, no, I do not think we will go on the tour. Come back.

Mr. Cureatz: —to refresh your memory about section 4, which is the core—

Mr. Chairman: Come back, Mr. Cureatz.

Mr. Cureatz: Section 4 is the core of the bill. Just as my learned colleague, who will unfortunately be absent this afternoon—

Mr. Chairman: We just do not want a travelogue such as we had yesterday.

Mr. Cureatz: I have to refresh my no-name Liberal over there.

Mr. Chairman: No, I do not think you do.

Mr. Cureatz: I am entitled to the manner in which I want to discuss this government amendment to Bill 113, which is the crucial turning point of what this is all about. Thank goodness the minister is here, because I will have her at least until noon, unless she gets a little disgusted and does not come back, because I am going to be asking you those questions—

Interjections.

Mr. Cureatz: You should have heard me yesterday morning; it was great. I am going to be asking you those questions that the four Liberals who are present—the funster Liberal who is absent and the no-name Liberal over there—are frightened to ask.

I am sympathetic about that because when Bill Davis brought in some things like buying a Challenger jet, I was often over there on the back bench waiting patiently, seeing if he did the right thing or did not do the right thing. I sort of thought: "A jet running around the province? It seems a little obscure. It doesn't look good to the public." But he was the Premier. What did I know? I sat over there quietly, just as I am seeing them do now. It grieves me no end to think that these now reincarnated backbenchers of the large, tyrannical Liberal government are supporting this proposed amendment to section 4, which is the core of the legislation.

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I cannot believe it. As I said yesterday morning, if you want to fool somebody—my law partner used to tell me this; now he is a judge. Mr. Trudeau appointed him to be a District Court judge making a humble \$127,500 a year plus \$3,000 from the provincial government. Did you know about that?

Hon. Mrs. Smith: No. I did not.

Mr. Cureatz: Can you imagine? I am surprised Ian Scott has been cut off with the \$3,000—

Mr. Chairman: We are going to send a copy of this to your partner.

Mr. Cureatz: They cut that off.

Hon. Mrs. Smith: I will give it to him.

Mr. Cureatz: Have you?

Hon. Mrs. Smith: I will.

Mr. Cureatz: Okay, good; do it. Plus they get a clothing allowance. Can you imagine? A guy is making \$130,500 and he gets a clothing allowance? Holy smoke. They get another \$800 to buy a suit, I say to the pearl lady, talking about her teeth only.

Lo and behold, what have I seen? I have seen the same kind of entrapment that yes, I too fell into back in those weighty days of a large majority government ruled by the mighty cabinet, afraid to be voiced in particular caucuses and be critical, afraid that the little—we have had the parliamentary assistant changeover, have we not? Have we got a list? Could I see the list?

Hon. Mrs. Smith: No.

Mr. Cureatz: That is too bad. I will get the list and I bet you, member for Durham-York (Mr. Ballinger), there are a lot of long faces now, are there not?

Mr. Ballinger: I hate being spoken down to.

Mrs. Cunningham: It is difficult speaking up to you, Mr. Ballinger.

Mr. Cureatz: Yes. You are so short. I have hope; that is why I am speaking this morning. I have hope there are going to be one or two of you who are going to break on this proposed amendment to section 4 of Bill 113.

Shirley, show your no-name colleague the bill to bring him up to date about what we are talking about.

Do you know what? It always surprises me that when you want to—

Mr. Ballinger: Chefarelli understands it.

Mr. Cureatz: Chiparelli. If you want a person to tell the truth—of course, as a parliamentarian, I can speak only the truth here, now that we are being recorded for Hansard; I have to speak the truth, but you are not listening to me. It is so frustrating for me, but I am going to tell you the truth again. Of course, if you tell the truth, they do not listen.

The truth is that for those of you who have been listening to all the delegations as we toured this fine province—which I am going to review with you in a few minutes—Madam Minister, if you had been with us on the tour, you would not be so smug and smiley. It was torture. You should go and stay up at the Highwayman Inn in Orillia. Do you think that was fun, listening to the traffic going up and down Highway 400 all night?

Hon. Mrs. Smith: I have done it in my day.

Mr. Cureatz: It was not.

Mr. Chairman: Mr. Cureatz, the rules allow you to speak and to be in full flight, but I am about to clip your wings.

Mr. Cureatz: Okay.

Mr. Chairman: I would like you to come back to the topic.

Mr. Cureatz: I am coming back to the core of what this legislation is all about, which is section 4. I am going to read. This is really serious stuff, because as has been revealed to us by all the witnesses who came forward, the local option—

Mr. Chairman: We are not dealing with section 4 at the moment.

Mr. Cureatz: Yes, we are. We are dealing with all the—

Mr. Chairman: We are dealing with the notice provisions, which is what I would ask you to address in your comments.

Mr. Cureatz: —the notice provisions. It is a copout by the provincial government trying still to slough off the responsibility to the local municipality. Of course, time and time again, we have heard that this committee is listening.

Mr. Chairman, as much as I respect you—we had a very pleasant drive from Toronto to Collingwood and talked about the meaning of life and decided that the meaning to life is being a parliamentarian, and do you know what? Much to my surprise, notwithstanding that discussion, time and time again I heard the chairman say: "We are here to listen. Twenty minutes is your time. Do with it as you wish. Not to worry." But did the Liberal government listen? You are supposed to say no, because you did not listen.

Mr. Ballinger: If you speak down to me, I am not responsible.

Mr. Cureatz: I have to tell the member for Durham-York, he said, "This proposed amendment for the 30 days is to listen to the delegations that have come forward." If the large Liberal, tyrannical backbench government had been listening at all, it would have realized that, lo and behold, this is not the manner in which it should proceed. You heard all the witnesses. You were in most of the committee hearings. I had hope for you, notwithstanding the triple scotches you bought for me, trying to subdue me. He is a rascal; he is pretty smooth. He works better when the committee is not in session.

Mr. Ballinger: One whole day's per diem and you drank it all.

Mr. Cureatz: I made up for it. I bought the poor old girl dinner one night and that cost me a fortune.

Mr. Chairman: Let's not hear about your social life.

Mr. Cureatz: Speed it up. Okay. You are going to have to make your own little way, because I do not know what the latest parliamentary assistant shuffle is. I am going to wait for the cabinet shuffle. Oh boy, there will be great gnashing of teeth then and one or two other Liberals resigning, I am sure, unless they have made a deal to be quiet until the next provincial election.

Mr. Chairman: Mr. Cureatz, come back to the amendment.

Mr. Cureatz: If you do not make your way on one of the very important issues of this bill, the municipal option—let's be realistic about it; this is really the core of it—you are going down. You are going to be finished.

I was hoping we would clear some cobwebs from your little noggins so that you would indeed stand up to the almighty cabinet over here, the Solicitor General (Mrs. Smith), for whom I have nothing but the highest respect. It is just that she is a little misguided on this. Of course, she has been listening to the Treasurer (Mr. R. J. Nixon), because it is his ball of wax. That is what he is pushing for. He is suggesting that the municipalities should have this, and we have all heard time and time again that the local option should not go to the municipalities.

Should I review with you why this section should not be passed?

Mr. Ballinger: Spare us the agony.

Mr. Cureatz: Should I remind you about the religious organizations that came forward and spoke to us? We were in a lovely community in southwestern Ontario, a place I understand the minister had the opportunity of visiting from time to time before she got her lofty position as Solicitor General, called London, Ontario.

Hon. Mrs. Smith: Will you let me go and visit it today?

Mr. Cureatz: Do you know who appeared before us in London, Ontario, concerned about section 4 and this proposed amendment?

Mr. Chairman: They could not have appeared to this proposed amendment.

Mr. Cureatz: Bishop Sherlock. A fine presentation if I ever heard one. He was very dignified and expressed concern about the kind of amendment to Bill 113 that we are seeing now in this legislation. I was devastated to think that a man of such prominence in that community, the minister's own riding, would be coming out and speaking.

Hon. Mrs. Smith: And I do not obey him.

Mr. Cureatz: I just cannot understand that.

Who else did we have? We did have a very fine, distinguished lady way out on the coast of Lake Huron who spoke in favour of the bill; one out of the 19 presenters that day. I have just forgotten. That bus ride from Orillia to London was so gruelling, I just could not keep all the figures straight the next day, or was it because we sat around the grand piano that night at the Holiday Inn? I have forgotten now.

Mr. Ballinger: He never quit talking the whole bus trip.

Mr. Chairman: Back to the amendment, Mr. Cureatz.

Mr. Cureatz: We had another person, Don Thompson, who called me yesterday. He runs a Canadian Tire store in Stratford. He was very annoyed about this proposed amendment to section 4 of Bill 113. I remember he was

really anxious, and he came up to me later and described what he could do. Then he made presentations. He did come before us in Brantford.

From the minister's home town, not to mention her municipal council, her distinguished mayor—minister, I know this is so much fun. Do you know what happened? They are against the proposed amendment to the core of this piece of legislation. It astounded me. You would have thought that another particular person from that great city in southwestern Ontario would have some influence on the core of this piece of legislation, section 4. There is a man down there who was successful in a minor way in the last provincial election. I felt sorry for him, as I told you the other day. I put a picture of him and me in my pamphlet. I tried to get his name in—

Mr. Chairman: Order. We are dealing with an amendment which was not even in existence at the time of all this historical background. I draw you back to the amendment rather than to subsection 4(1). We will get to subsection 4(1) and you will be able to fly high on that.

Mr. Ballinger: Mr. Chairman, with the greatest respect, he does not care what page he is on. He is having a wonderful time here.

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Mr. Cureatz: I am trying to add some depth and colour to the principle of this bill. This is what it is all about.

It just breaks my heart to think that you people, the parliamentary assistant—you know, we have had our disgruntlements about him, but he has hung in there not too badly after all the abuse we have given him, not to mention all the abuse the witnesses have given him. The committee heard 269 presentations and a minuscule number of people favoured the legislation, favoured the core and the principle of this bill. The rest of them were all against it, the whole kit and caboodle.

We had all the church leaders from your home town. Various denominations were against the core of this, Bill 114. We had all the employees, unionized and nonunionized. We had most of big business against the legislation except the fellow down in St. Catharines who owned a big mall. Finally, a mall owner came out and said he liked the legislation. Why did he like it? Because he had a large institution and if he could make another dollar on the particular Sunday, he was going to make it. I gave him credit. He came forward and I did my bit with him. I thanked him for coming, but he got chewed up a little by the crowd. Were you there, Mr. Ballinger?

Mr. Ballinger: Yes, I was there.

Mr. Cureatz: Good.

Mr. Ballinger: It is a wonderful place.

Mr. Cureatz: You remember who is really going to be benefiting from this amendment to Bill 113, this section 4. It is the big mall owners. We even specifically asked about the tenancy agreements. If he could not get a tenant in there, he indicated to us—

Mr. Chairman: How will they benefit by the amendment, which is what you are supposed to be addressing?

Mr. Cureatz: Because eventually it is going to unfold into wide-open Sunday shopping. This is the core. I have been saying I cannot understand why the Liberal backbenchers have not got off their butts and suggested that maybe they have made a mistake. This little sop here, this little amendment to section 4, is going to somehow placate all the people out there who are concerned, placate all the witnesses we had come forward giving their thoughts and ideas about why this proposed amendment is not adequate? They said, in fact: "Scrap the whole bill. We don't like it." Do you remember that?

I think you have a particular religious faith, Mr. Chairman. I can remember up in Sudbury one night at the Peter Piper Inn, there you were. "Father," you said, "that was a fine presentation. I am deeply moved." That is what the chairman said. Lo and behold, what are we doing? We are back. The parliamentary assistant does not even have the courtesy to hear my concerns about this proposed amendment.

Mr. Chairman: Mr. Cureatz—

Mr. Cureatz: We are back after that fine presenter up in Sudbury. The chairman even complimented him. Even I was moved and I thought I had heard everything.

Mr. Kanter: I had laryngitis up there.

Mr. Cureatz: Yes, I remember that.

Mr. Kanter: It was awful.

Mr. Cureatz: What do we see? We see this large government. But there is hope. Hope springs eternal, because I know when this bill finally leaves committee, minister, and it will, because not even I can keep dragging this out as long as they want me to—

Interjections.

Mr. Philip: Do not plan on it as a Christmas gift this year.

Mr. Cureatz: Yes; in 1989.

Mr. Ballinger: We are going to have time for lunch today, are we, Sam?

Mr. Cureatz: The most serious aspect was of course the cutting off at the knees of the Liberal backbenchers the very first day up in Collingwood with regard to this kind of amendment to Bill 113. We were there. Remember Collingwood, the Blue Mountain Inn?

Mr. Chairman: We remember it. You are being repetitious now.

Mr. Cureatz: But I want to bring it to the minister's attention. I have five minutes. She might go. I want to ask her the question—

Hon. Mrs. Smith: Not for five minutes, though.

Mr. Cureatz: I want to ask her the question they are afraid to. It is so great to be in opposition now. We do not make the bucks. We do not have

the limos and the expense accounts and five people running around with suitcases and opening doors. That is all gone.

Hon. Mrs. Smith: You have not forgotten it.

Mr. Cureatz: There will be a time. You were only in opposition for eight weeks, I remember, before we lost the government.

Do you know what happened in Collingwood? Let me refresh your memory. Do you know what happened? They have heard this before, but you were not here yesterday morning. We suddenly get word on August 2, "Solicitor General Joan Smith says the legislation's local option clause is strictly non-negotiable."

Hon. Mrs. Smith: That was Peterborough.

Mr. Cureatz: I am coming to Peterborough when I have enough time. Oh boy, you just wait.

I felt so sorry for my Liberal backbench colleagues. My heart bled for them. I thought, "Now, there's the Solicitor General"—I have the greatest amount of respect for her, complimented her when I became the critic of the Solicitor General's office, but I did speak out when you first introduced this bill. You had a statement. I can remember before Christmas last year, around Christmastime. I thought, "How could she bring up—

Mr. Philip: I was pleased when she became Solicitor General because I knew she believed in a common pause day.

Mr. Cureatz: Yes. She has talked to the same thing.

Interjections.

Mr. Chairman: You can discuss that out in the hall afterwards.

Mr. Cureatz: It was the same thing with Ian Scott. It was the farthest thing from his mind, Bill 113 and this proposed amendment to section 4, this government motion. Do you know what happened? Lo and behold, the minister comes forth and then we send this great committee to travel around the province. The first hearing is up in Collingwood—we had a great night in Collingwood. We had a beer with Bill Walker of the Toronto Star, knocking the heck out of the parliamentary assistant day after day about real people. My heart went out to him, too. It is tough being the government, I know.

Lo and behold, she sideswiped all the Liberal members on the committee by saying it is non-negotiable. They had to sit there and take it. John's eye was hurting that night. Holy smoke. What a time. Talk about kicking a person when he is down. He is physically hurting. Then Mike is running around waving this—

Mr. Chairman: Could we get back to the amendment, Mr. Cureatz?

Mr. Cureatz: To add insult to injury—listen, I really like this one. This is why I cannot understand why your people are proceeding with Bill 113, this government motion. We could be all out enjoying Thanksgiving long weekend.

Hon. Mrs. Smith: Good idea.

Mr. Cureatz: And you know what is happening? You are here listening to me.

Mrs. Cunningham: And I am reading all the Sunday shopping letters and the bad news about the Liberals.

Mr. Cureatz: Yes. The only one who is not listening to me is my colleague.

Mrs. Cunningham: Do you want me to read a few out loud?

Mr. Cureatz: You know what? This government motion, this amendment to section 4, and lo and behold—

Mrs. Cunningham: Former Liberals, by the way.

Mr. Cureatz: That is right. They are all Tories now. Do you recognize that guy?

Mr. Kanter: Some of them went the other way.

Mrs. Cunningham: Former Liberals. Do you want to see the most—

Mr. Cureatz: This is the Premier (Mr. Peterson), whom I have nothing but the highest regard for, really. As an individual, he is a prince of men. He ran a fine campaign of: "Hi. How are you?"

Interjections.

Mr. Cureatz: What is this? Yes, this is it.

Mr. Chairman: Would you like to move the adjournment of the debate, Mr. Cureatz, it now being shortly 12 o'clock?

We are adjourned until two o'clock.

The committee recessed at 11:58 a.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Friday, October 7, 1988

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Ms. Poole

Collins, Shirley (Wentworth East L) for Mr. Keyes

Cordiano, Joseph (Lawrence L) for Mr. Chiarelli

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

AFTERNOON SITTING

The committee resumed at 2:04 p m. in committee room 2.

Mr. Chairman: We have resumed.

Mr. Cureatz: Mr. Chairman, I have a particularly important point of order.

Mr. Chairman: All right. Let's hear it.

Mr. Cureatz: It has been brought to my attention that this is the Thanksgiving long weekend. I am just going over my day journal and have realized the number of lengthy commitments I have made in my constituency.

Of course, if experience holds true, I have prided myself on always attending the various functions held by my fine people who have been so kind to me and have re-elected me time and time again.

As a result, I can only think in terms of all of my own colleagues here in the Legislature. They no doubt have the opportunity also of representing their constituents, the government and their particular party over the Thanksgiving weekend. With that in mind, I would like to propose that the committee terminate the hearings for today at three o'clock.

Mr. Chairman: That is hardly a point of order.

Mr. Cureatz: Then I would like to move such.

Mr. Chairman: It is a motion. You are moving a motion.

Mr. Cureatz: Yes.

Mr. Philip: I would concur with the motion. I am a little tired. I have just had a long argument with our outreach. They demanded that I take the words "devil worshipper" out of my press release. Therefore, in a state of exhaustion, I will agree with my colleague.

Mr. Kanter: Mr. Chairman, unlike my two colleagues, I did not spend the noon hour composing a press release or composing a response, but I have canvassed my colleagues and hear no objections to the proposal.

Mr. Cureatz: Hurray.

Mr. Chairman: We can do it probably with unanimous consent. All right. At 3:30 p.m?

Mr. Cureatz: Three o'clock.

Mr. Chairman: Are there no conditions attached? No conditions whatsoever?

Mr. Cureatz: Let the leaders of the parties figure it all out.

Mr. Kanter: Believe me, Mr. Chairman, if I could have gotten them to agree to approve the whole bill by that point, we would have—

Mr. Chairman: I was not thinking in those terms at all, Mr. Kanter. I would never suggest that. Mr. Cureatz, you were in full flight.

Mr. Ballinger: Oh, was he? I came too soon.

Mr. Kanter: We will have to review that for Mr. Ballinger.

Mr. Chairman: You may resume, perhaps at a lower altitude.

Mr. Cureatz: Was I? Oh, I was.

Mr. Chairman: You adjourned the debate. Remember?

Mr. Cureatz: Just to bring everyone's attention back to the government motion, what was really shocking to me, as I indicated, in the Premier's own home town of London, was the kind of animosity. Mind you, Ms. Collins, MPP, was not in London to have the opportunity of witnessing the slings and arrows against this legislation in section 4, which is the core of the bill.

Some people criticized the picture of myself and the Premier in one of my newsletters during the last election. I indicated I was only trying to help because I knew he would need this kind of help with section 4 being proposed as a government motion. Interestingly enough—you will like this, Mr. Chairman—there are other people in these hallowed chambers—

Mr. Chairman: I am holding my breath.

Mr. Cureatz: —who are trying to give some assistance to the Premier because he did so poorly in the last election.

Mr. Kanter: Which election was that?

Mr. Cureatz: Just this morning a brochure happened to cross my desk from none other than Allan McLean, who is a colleague of mine, way in the back bench, I might add, which I cannot believe because I have been doing such a stalwart job on section 4 and this government motion. Do you know who we have in this brochure of Allan McLean? He is someone I respect very much; we affectionately call him the member from Coldwater.

I was just shaking the Premier's hand. Al is arm in arm with him in front of the Legislature. I get criticized about some of the antics I have pulled off. Can you imagine how much help the Premier needs with this government motion?

Ms. Collins: Could you pass that around?

Mr. Cureatz: Al is really going the extra mile to help because we all know the real person behind this motion and the bill is Bob Nixon. Al knows the kind of turmoil this legislation is causing across Ontario. He realizes it is going to be devastating to the quality of life, just as this government motion is going to wreak havoc on all the fine communities, some of which we visited.

Mr. Kanter: It is a good motion. You may not like it, but it is a good motion.

Mr. Philip: And Bob Nixon dislikes this as much as he dislikes John Turner.

Mr. Cureatz: Yes. We have not seen John Turner, Bob Nixon and David Peterson arm in arm, but that is an aside.

Mr. Chairman: Can we return to the bill?

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Mr. Cureatz: In any event, Al feels so badly about this bill and section 4. I just happened to bump into him the other day. He said: "Bob is going to need a lot of help; he really is. It is going to be awful. So I went and put Bob, the Treasurer, in my pamphlet."

I had just done a press interview with CFRB and I was indicating my disappointment in the government legislation, that why they were ramming this bill down the throats of the people of Ontario was beyond my appreciation. Al was concerned obviously about Bill 113 and the proposed government motion. He wanted not only to help the Premier, but he wanted to help none other than Bob Nixon, the long-standing member of some 26 years now in the Legislature. Al is concerned Bob will be in trouble in the next election if he runs. The trouble will be Bill 113 and the government motion.

Notwithstanding that, I am really surprised at what has taken place, with appreciation, though, I might add, to my Liberal colleagues for allowing us to adjourn at three o'clock because that allows all of us the opportunity of making our way back to our ridings on what is going to be a busy day.

There is a degree of frustration, reflected not only by the number of amendments which have been brought forward by my NDP colleague; my own colleague, Mrs. Cunningham—

Mr. Philip: Wait until you see the one from the next one.

Mr. Cureatz: She brought forward a proposal to try to make some sense of the bill. I say to the parliamentary assistant that we give him credit for allowing her to bring it forward and the chairman's decision to allow her. She did not mention that, but I appreciated that. I do not think she realized the kind of spot she was in, the possibility of being ruled out of order. Because of the antagonistic approach we have had on this committee, I want to say sincerely to the chairman and to the Liberal members of the committee that we appreciate your allowing her the chance to bring it forward; she has done a lot of work on it. She wanted to bring it to everyone's attention to show that the specific aspect of tourism could indeed be identified.

Notwithstanding her bringing forward the motion, it was defeated, and we are back on to this particular section. I want to say that the government motion is an attempt to try to quell all that we have heard from the witnesses who have come before this committee. I say to the parliamentary assistant that it just does not meet it, and I would only ask him to review what he has brought forward.

The member for Durham-York (Mr. Ballinger) indicated that he felt it would be beyond feasibility to give what my NDP colleague had indicated, namely, notice to all the people who were concerned about having hearings on

wide-open Sunday shopping, that they should be told. When we had the witnesses come before us, and goodness knows I can review with you the church groups and the unions and nonunion workers and the large businesses and small businesses, they were all saying the same thing. You are forgetting that they were speaking not only for themselves but on behalf of thousands of people.

I just want to conclude by reminding you that we had the chairman—was it of Sears?—who was before us back at the Legislature after our tour. He said to us that they had a summer party at Canada's Wonderland and in the large auditorium he announced he was coming forward to this committee to be in support of a common pause day and against this legislation, more particularly, the local option being given to the municipality and more particularly, section 4.

He said he wished he had a videotape of that comment he made, because the resounding cheers and applause were deafening. We actually had some videotape presentations to the committee in the Amethyst Room from, I believe, a couple of church groups. You have to admit the visual impact is a break from the presenters we have had, in terms of either their off-the-cuff dialogue or their specific briefs.

Maybe a video presentation of those thousands of people cheering the chairman of Sears—he was in favour of a common pause day and against the legislation—would have had that kind of specific impact. It is difficult for the government backbenchers who have been touring. The minister has come in, which we appreciate, a couple of times this week already, but she is not on tour. Sometimes you scratch your head. It makes you wonder whether they really have the pulse of Ontario out there. That remains to be seen, but in terms of our function, we will be—

Mr. Philip: We have got the pulse of Ontario if we judge from the comments of the delegations.

Mr. Cureatz: That is right, I say to my colleague, Mr. Philip, just going on that alone. We could review all that information—I think we will have a chance again in the Legislature—about the numbers that have come forward. Very simply, I say to the parliamentary assistant, we will not support this motion on this section.

Mr. Philip: I have an amendment to the amendment, Mr. Chairman, hot off the press.

Mr. Chairman: Mr. Philip moves that the motion to add subsection 4(1a) be amended by adding thereto the following clause:

"(d) shall publish the notice mentioned in the clause in any language where more than 10 per cent of the residents of the municipality have that language as their mother tongue."

Mr. Philip: The purpose of my amendment is to ensure that large numbers of people, particularly small business people, will be notified in the language they often use. In other words, in the west end of Metro, which I am most familiar with, obviously, it would mean that Metro council, if it wished to change anything, would have to put an ad in Corriere Canadese. They would also probably have to put ads in the Korean newspapers and some of the other so-called ethnic-language newspapers.

A number of the people in my riding who run small businesses have Italian or Korean as their first language. They often do not read the English-language newspapers every day. Therefore, an ad in the Toronto Star, the Toronto Sun or the Globe and Mail might not reach them. We have done this, if you will recall, on numerous occasions with committee hearings. We have advertised in the press of various different languages. It seems only reasonable that the municipalities should, if that press exists within their boundaries serving their communities, advertise so that business people and other interested groups may make themselves aware of what is going on and, therefore, participate in the democratic decision-making of what is going on.

If the provincial government can do it, certainly municipalities can then do it. Since Mr. Kanter and the Solicitor General constantly say this is a way of ensuring that the elected body closest to the public makes the decisions, it is obviously a way of making sure that the very distinctive communities we have, including the communities within communities, participate in that system.

I have the motion here. Perhaps it can be run off for members.

Mr. Chairman: Okay, members, you have heard the motion. Is there to be any debate on it?

Mr. Cureatz: May we speak to it?

Mr. Chairman: Why do we not wait and have it reproduced? Does everybody want to wait until it is reproduced or would you rather proceed now?

Mr. Cureatz: I would like to have a copy. I think it is a good idea.

Mr. Chairman: All right. We will stand in recess until 2:30.

The committee recessed at 2:20 p.m.

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Mr. Chairman: All right, you are on.

Mr. Kanter: I believe the sponsor has spoken to this motion.

Mr. Hampton: He merely introduced it.

Mr. Kanter: I recall some comments.

Mr. Chairman: I think it is the type of motion that speaks for itself. It does not really require a great deal of discussion.

Mr. Kanter: We want to discuss it some, on this side.

Mr. Chairman: The clerk has indicated there is a change.

Clerk of the Committee: It should read after clause 4(1a)(d): "Shall publish the notice mentioned in clause (b) in an ethnic language newspaper."

Mr. Chairman: "An appropriate," perhaps.

Ms. Mifsud: Or in "any."

Clerk of the Committee: "In any ethnic language newspaper where more than 10 per cent of the residents...."

Mr. Chairman: Okay.

Mr. Ballinger: Can I torch this now? You have been carrying this all summer.

Mr. Cureatz: No, no. That is my favourite. I am going to use that all fall.

Mr. Chairman: I hope you identify what you are torching for Hansard, so when somebody reads it, he does not think you are torching the building.

Mr. Cureatz: It is the front page of the Peterborough Examiner where, as we were heavily in committee on that particular Thursday, the minister said that there would be no negotiations on the local option.

Mr. Chairman: All right. Is there anyone who cares to speak to Mr. Philip's motion?

Mr. Cureatz: This would be a nice time for me to take a run at it for five minutes.

Mr. Chairman: Mr. Hampton.

Mr. Hampton: I agreed with Mr. Philip that I would speak in his stead if he were not able to make it back in time, realizing, of course, your desire to move ahead as quickly as.

Mr. Kanter: He said it with a straight face.

Interjection: What time is your flight out?

Mr. Chairman: I would caution everybody that Hansard is available as a public distribution. Go ahead, Mr. Hampton.

Mr. Hampton: I realize it is sometimes difficult to keep the members of the Liberal caucus under control.

Mr. Cureatz: And all the members of the Conservative caucus.

Mr. Hampton: So I thank you for your effort there.

As Mr. Philip has stated, just as there are a number of cultural groups in some of our larger metropolitan areas, some of which may be in favour of the general tenor of the government's legislation, many of which are not, I think one of the arguments the government has marshalled to support the principle of the legislation is that it wishes to pay some respect to some of those cultural groups. It wishes to respect the multicultural nature of our society and that is one of the rationales that is cited in the presentation of this legislation.

As Mr. Philip has said, and I agree with him wholeheartedly, it is not just in Metropolitan Toronto that one might find this. It is also in a city as small as Thunder Bay, where you may have a significant portion of the population which speaks only Finnish and which communicates, in terms of

political ideas and any other sort of public issues, by reading the local Finnish newspaper. I suggest members of the Liberal caucus, if they would like to see how significant that population is, should perhaps talk to the Liberal member for Thunder Bay and he can inform them that there is a sizeable Finnish population, a great many of whom do not speak or read English and pay very little attention to the English press. Similarly, there is a large Italian population. That is also true in a city like Thunder Bay or a city like Sault Ste. Marie. It is also true in a city like Sudbury.

I would suggest to the government members that if you want to pay some respect to the different cultural groups in our society in terms of this legislation and if you are saying that this legislation is what some of the various cultural groups desire, I think it is only fair that we provide notice or make provisions for notice to these various cultural groups in the language they communicate in, if and when there is going to be a change at the local or regional level. It seems to me that if the principle applies in the first case, it should also apply in the second case.

I know the government is going to say that this creates some complications and it may be difficult and so on and ask how one determines if the population is 10 per cent in size.

I do not think you have to go out and do a census study every time. I think we already deal with those situations, and the way we deal with it is that we always err on the side of being careful. We always take note if a population in any way approaches that size, or if there is a significant population, and we put out the notice.

I know that happens at the municipal level. I also know the government has done it in the past. If I am not mistaken, I believe some of the auto insurance notices, when this committee was looking at the auto insurance bill, were put out in some of the ethnic newspapers to be sure members of the various ethnic communities received notice of the important elements of the proposed legislative changes.

I do not think the complications or the potential complications should be overestimated. They have been dealt with before. In fact, they are dealt with on an almost everyday basis in many of our municipalities. If the principle applies in terms of the rationale for this legislation, allowing some of our larger ethnic communities some freedom as to whether they want to open on Sunday, I think the principle also ought to apply in terms of attempting to communicate to some of those important ethnic communities. We ought to set down the rule that the communication must be in such a way that is likely to be received by them in a medium that members of those communities are likely to read and take notice of on a regular basis.

1440

I think I can summarize again. Those are the principle reasons Mr. Philip has put forward the amendment, and I think those are the reasons the amendment ought to be accepted.

Mr. Cordiano: Can you give me some sort of justification for 10 per cent? It seems a bit of an arbitrary figure. Did you just pull that out of a hat or what?

Mr. Philip: The reason is that in communities such as mine we may not have large concentrations of any one group, but a majority of the people may not have English as their first language. I think 10 per cent was a conservative figure. It seemed reasonable.

Mr. Cordiano: It is not really based on any kind of statistical data? It is your estimation of what it should be?

Mr. Philip: Yes. I believe that municipal councillors do know their community on things like that in the same way that I have a fairly good feel as to what percentage of my community are Italian, what percentage will write in Punjabi and read Punjabi and what percentage are Hindi and write Hindi.

Mr. Cordiano: I understand.

Mr. Philip: We tried through research to find a figure that might have been used in other provincial matters and could not come up with it.

Mr. Cordiano: I think it is arbitrary. It may not be meaningful.

Mr. Philip: It is an arbitrary figure. If you feel that another figure is more appropriate, I am willing to discuss it. The main thrust of it is to make sure that if there are people who do not use that particular language and normally would read *Corriere Canadese* rather than the *Toronto Star* and so forth, it be advertised in those papers.

Mr. Cordiano: I do not know how you can come up with a figure. Trying to determine what that should be is going to be quite difficult, I think. I know it is an attempt to try to do that, but I still think it is kind of arbitrary to say 10 per cent, 15 per cent or 7 per cent. Who knows? I think we have to use a guideline that has some meaning and some substance, based on something.

Mr. Philip: If you can suggest one, then I am open.

Mr. Cordiano: I would rather not have one if we are not basing it on anything.

Mr. Philip: If you do not have 10 per cent in there, then what do you put into it? Do you have some suggestion as to the wording?

Mr. Cordiano: If it is a general guideline that says you make an effort to reach people who need to be reached and then you do not have a figure attached to it, it leaves it sort of vague but gives people the option. I think that is probably better, because that 10 per cent might exclude a lot of people.

Mr. Philip: That is too vague for me to accept.

Mr. Cordiano: You are simply attaching a figure that is arbitrary. I am concerned that there may be a lot of people you miss under that 10 per cent ceiling.

Mr. Chairman: Mr. Philip has indicated he is not prepared to go to what you have suggested. If you wish to do that, the only way you can do it would be by moving an amendment to Mr. Philip's amendment. If you are not going to do that, I am going to move on to Mr. Sola, as indicated. But before Mr. Sola, Mr. Cureatz has—

Mr. Cureatz: Oh no, Mr. Sola is fine.

Mr. Chairman: You have no discussion on this amendment?

Mr. Cureatz: I might have.

Mr. Philip: May I just make another response to Mr. Cordiano?

Mr. Chairman: All right.

Mr. Cordiano: I wanted to—

Mr. Chairman: Just a second, Mr. Cordiano. Mr. Philip has another response.

Mr. Philip: If he is getting advice, then I think he should be able to get it and I will respond to him when he is ready.

Mr. Cordiano: I still maintain that I think we should leave it to municipalities to determine what is appropriate in those instances and not have a guideline which is not based on something we have as indicative of what is going on out there. I think municipalities are probably better able to determine that on a municipality-by-municipality basis, with the local area in mind.

Mr. Philip: Let me put it to you this way then. It seems to me that if you make it very general, then you can have one of two things happening. You can have someone who is the only person in the whole community who speaks that particular language demanding that he did not receive a notice in that language. I think that opens the municipality to abuse.

Mr. Cordiano: That can happen now, though.

Ms. Collins: What happened to the postal code argument?

Mr. Chairman: Mr. Philip has the floor.

Mr. Philip: There has to be some point in time at which you say the municipality has the responsibility of reaching a majority of people. Ten per cent is low enough to ensure that a municipality does not, on the other hand, simply say, "Well, there are not 40 per cent Italian-speaking people in our area and, therefore, we are not going to advertise in Corriere Canadese."

I think that 10 per cent is a reasonable figure. It may well be that with any of these complicated issues there is always a time when people have to work with a piece of legislation. They may well come back in a couple of years' time and say, "Here's a more reasonable figure," or, "Here's what the census says," or, "Here's what some other jurisdiction says."

Mr. Cordiano: Can I give you an example?

Mr. Philip: Sure.

Mr. Cordiano: The population of Metropolitan Toronto will be approximately three million. Let's use that as a rough estimate, because that is the real figure. The latest census does not reflect that. Let's take the Italian community, for example. The estimate of those whose mother tongue will

be Italian runs somewhere around 250,000. They are a very large ethnic group, which conceivably could be missed under your 10 per cent guideline, because the numbers may not work out.

I am just saying it as a technicality. The argument will be made that everyone is aware of that and everyone is going to agree by consent that we are going to have something sent out in Italian because we all know that is a very large community. I do not want to stretch this any further. What I am trying to say is that if you have that 10 per cent rule, which may or may not be meaningful—I think your attempt to try to give municipalities guidelines is a good attempt, but by the same token, you may be missing out on a lot of people with that 10 per cent rule. You may be excluding them.

Mr. Philip: If you would rather then, if you are worried about my missing out, then I am quite prepared to lower that to five per cent.

Mr. Cordiano: I just do not think you are a good judge of what it should be. I think we should leave it to those people who have to send out the notices. There will be a certain sensitivity built into that. I know we all want to be sensitive to those things and I do not think you can do it by decree in an act.

Mr. Philip: I am prepared to stand down this amendment until next week, at which time research could try to collect some additional information that may satisfy Mr. Cordiano's concerns.

Mr. Chairman: Are you withdrawing the motion?

Mr. Philip: No, I am standing it down, which means that it would be brought back and debated next week.

Mr. Chairman: It will not be brought back next week.

Mr. Philip: It will be brought back at the first—

Mr. Chairman: At the call of the chair.

Mr. Kanter: We can perhaps discuss later the schedule of the committee, but I believe we have a motion before us. Would it not require unanimous consent of the committee to stand it down? I think Mr. Cordiano has indicated he does not wish it stood down.

Mr. Chairman: Mr. Philip is not asking that the motion that is before us be stood down. He is asking that the new amendment to the amendment be stood down. I guess it will have to be stood down, because we have to deal with the amendment first, before we deal with the amendment to the amendment. So you do require unanimous consent or a motion.

Mr. Philip: The reality is that either we can debate this amendment to the amendment until three o'clock, in which case it has the same effect as standing it down until the next time we meet, or we can, in a gentlemanly way, stand it down and then discuss the amendment, if you wish. Either way, I am at your pleasure, as they say.

Mr. Kanter: Perhaps we might be proceeding a little more expeditiously, but I think we should proceed to discuss this amendment. I think other people in our party—

Mr. Chairman: I wonder if I may make a suggestion. If Mr. Philip's practical result is the same, we could go back. We had stood down section 3. Perhaps we could go back to 3.

Mr. Kanter: We are on this subject now. Members are focusing on this subject. I think we should debate it and, hopefully, end it by three.

Mr. Philip: Why do we not just have other comments on the amendment? I am listening to it, and Susan is listening, and perhaps we may be able to come up with some research that will satisfy you by the next time we deal with this amendment to the amendment.

Mr. Chairman: All right. Are there any other speakers on the amendment to the amendment to the amendment to the amendment, as suggested?

Mr. Sola: I cannot support the amendment for a myriad of reasons. First of all, in Canada, we have many people who are political immigrants to Canada. The reason they are political immigrants to Canada is that they do not agree with something in their home state, whether it is the name of the state, the language of the state, the system of the state or whatever. They come here to have complete freedom of choice to call themselves what they are and do what they want, as long as they follow the rules as laid down in Canadian law.

Therefore, we would be making an arbitrary decision as to what is the nationality of the people concerned, their mother tongue, the percentage, because among them—just to mention my own, I am Croatian. My country is tied up in Yugoslavia. If you take the Yugoslavs as such, the people who come from that area, you might get 10 per cent. If you break them down to Croatians, Serbians and all the others, you might get two per cent of each or something.

The other thing is, they came here not to be labelled under the official terminology but under the terminology that they recognize, which our government sometimes does not; so you would get into a political problem.

Second, Canada has only two official languages. We can tie our governments to using only the two official languages. Anything else should be just out of the generosity of our hearts.

Then there is a problem of the accuracy of translation, and I know that because I have done millions of them. We can write something out in English, and if we do not have somebody from our committee in whom we have complete trust to oversee the accuracy of the translation, it can come out completely backwards in the language we want to translate it in.

Apart from that, when these delegations come before the committee or whatever to make their briefs, if they cannot speak English, they will have to use their own language. That creates another translation-back problem. Are you going to be paying for these translators?

Then there is the ethnic press. Some are weeklies, some are monthlies and some are bimonthlies or trimonthlies or two or three times a year. Some ethnic groups do not have any papers that comment on local matters; they are still concerned more with matters as they are in their home front.

If we set this up and the ones who do have an ethnic press get the notice on time, the other ones will complain that they have been ignored because we have not taken into consideration that they only publish two or three times a year.

I have also found out that, among the ethnic groups, they are usually more interested in political matters than native-born Canadians are and they always make it a habit to find out what is going on. I know we have been a clearinghouse of knowledge since the first day we arrived in Canada because of our knowledge of the language. We are always asked to translate, to get the meaning, and if we do not know it, we will find out from somebody else. All ethnic groups have that among them. Through their church or through some other organization or through some prominent family or profession, they always get to the gist of the matter.

I think we are just opening up a can of worms that nobody would be able to unravel. Sometimes, in taking a step like this, we would probably get more protests on the name of the language that we used, the name of the nationality or whatever than whatever we were trying to rectify in the first place, whatever this was set up to solve. For all these matters, I cannot support this motion.

Mr. Chairman: Thank you, Mr. Sola. Ms. Collins, and then I will give you an opportunity to respond, Mr. Philip.

Mr. Philip: May I just ask a question of Mr. Sola?

Mr. Chairman: Ms. Collins, are you prepared to yield?

Ms. Collins: That is fine, Mr. Chairman.

Mr. Philip: All right. Taking your first point, of asking the language, the mother tongue, I gather that your position is that you would be against anything that did that. Can one, therefore, assume that you are currently opposed to the Canadian census, which does do that?

Second, on your argument that some ethnic groups have a newspaper in the language of their origin or of their culture and that advertising in those newspapers is discriminatory against groups that may not yet have a newspaper in their language, if that is your position, I take it you would be opposed to all present policies of the present provincial Liberal government that place large numbers of ads in all the ethnic newspapers in the languages of those ethnic newspapers. Is that your position? If it is, I certainly would—

Mr. Chairman: I am not sure that is—

Mr. Philip: It is not for you to answer, Mr. Chairman. I did not ask you.

Mr. Chairman: No, but as a matter of fairness, you asked Ms. Collins to yield to you, which is the way it has to be done, and then you put to Mr. Sola two purported questions, which will certainly deprive Ms. Collins of having an opportunity to speak to this matter before we adjourn at three o'clock.

Mr. Philip: I would like to extend the adjournment to 3:05 and let Ms. Collins speak.

Mr. Chairman: We need unanimous consent to do that. First of all, it is up to Ms. Collins and Mr. Sola.

Mr. Sola: First of all, the census has nothing to do with this bill. The census asks you to identify yourself; that is all it does. People will identify themselves properly. What you are asking to do is ask somebody who is not in the group to identify the group properly for himself, and that is what I am saying. I personally would be offended if I were approached under the term Yugoslav, Serbo-Croatian or whatever, if it is not specifically what I am. I am a Canadian and I am a Croatian, but I am not all these other mixes.

Mr. Philip: How are you approached, if I put an ad in the paper?

Mr. Sola: Just a second. You asked the question. I will answer it.

On your second question, about the ads in the papers today, again that is information. That is not something that may withhold somebody's rights.

Mr. Philip: How does this withhold somebody's rights?

Mr. Sola: Your perception of this bill is that it is going to affect family values and affect your whole lifestyle.

Mr. Philip: Have you read the amendment?

Mr. Sola: Yes.

Mr. Philip: It says to publish the notice the same way as the provincial government publishes notices of all kinds of things in the various ethnic newspapers. How does that interfere with my rights or how does that mean that I approach you?

Mr. Chairman: Mr. Philip, it started out as questions. It now being three of the clock, Mr. Sola, would you move the adjournment of the debate?

Mr. Sola: I so move.

Ms. Collins: Mr. Chairman, could I just put my point on record before you adjourn, because you may be asking research to get information? Could I do that?

Mr. Chairman: Do we have unanimous consent to do that? Yes, we do.

Ms. Collins: Thank you.

Mr. Chairman: What about from the third party?

Mr. Hampton: Thirty seconds.

Ms. Collins: I have a practical concern. It applies to my municipality. I am from the city of Hamilton. In Hamilton, we have numerous ethnic groups. Many of them could comprise the 10 per cent of the population. Yet there might be a drugstore in the west end of Hamilton that is slightly over 7,500 feet that decides it wants to make an application to the municipality to open on Sunday. That is where there is a large Greek community, but not Italian, Yugoslavian, Polish and so on; so you are asking the city to take on the burden of advertising in all these different languages

which really have nothing to do with that particular application in the community it affects.

When I was on city and regional council, we did take those things into consideration. I think the city of Hamilton would, in a case like that, just advertise in the Hamilton Spectator and the Greek newspaper. That is my concern. It has nothing to do with some of the points that have been raised already, but it would be a large expense to the municipality.

Mr. Philip: I think you make a very valid point. I do appreciate your argument. You will be surprised at the way in which we will be able to amend this on the weekend to meet your concern.

Ms. Collins: I share some of the other concerns of my colleagues.

Mr. Kanter: All the way from Australia.

Mr. Ballinger: Mr. Innovation.

Mr. Chairman: We stand adjourned to the call of the chair.

The committee adjourned at 3 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Monday, October 17, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Ms. Poole

Collins, Shirley (Wentworth East L) for Mr. Keyes

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, October 17, 1988

The committee met at 4:08 p.m. in room 228.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 4:

Mr. Chairman: Whence last we met, gang, we were dealing with an amendment by Mr. Philip. Are you ready to—

Mr. Hampton: Mr. who?

Mr. Chairman: Does this say Philip? I always call him Philip and he never objects.

I understand there may be an amendment to the amendment that is before us.

Mr. Hampton: That is not my understanding at this point.

Mr. Chairman: I do not want to put you in a difficult position. If you are ready to speak to it, we will go, but if you are not—

Mr. Hampton: I would like to survey your expense cheque, Mr. Chairman. I probably want to give it deep consideration.

Mr. Chairman: Well, the motion we had was, "Mr. Philip moved that the motion to add subsection 4(1a) be amended"—

Mr. Ballinger: I move we adjourn.

Mr. Chairman: —"by adding thereto the following clause"—

Interjections.

Mr. Chairman: I am advised by the clerk that technically we should not start until the House has decided whether or not it is going to deal with matters in an emergency debate. We will adjourn to await the verdict of the House.

Ms. Collins: Mr. Chairman, does that mean the committee will not sitting if there is an emergency debate?

Mr. Chairman: No.

Ms. Collins: Then why do we have to wait for the decision?

Mr. Chairman: Because that is part of routine proceedings. Until routine proceedings are over, we do not have authority to sit.

Ms. Collins: Oh, I see. Thank you, Mr. Chairman.

Mr. Ballinger: Ed Philip will know that. That is probably why he is not here.

Mr. Chairman: Is that for purposes of the record, Mr. Ballinger? We stand adjourned until routine proceedings have been concluded.

The committee recessed at 4:08 p.m.

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Mr. Chairman: I see a quorum, including all members. I am told by the clerk, Mr. Philip, that you moved an amendment and then you moved an amendment to the amendment. You have not moved it yet? All right.

Mr. Philip: I have not moved it yet. I was so persuaded by the concerns of Ms. Collins that I brooded about it for a whole week and I had extensive research done. With considerable help from legislative counsel, I think I have a new amendment that will satisfy Ms. Collins' concerns, which I really appreciate because they were legitimate concerns.

Mr. Chairman: Are you going to withdraw the motion, then?

Mr. Philip: If I might withdraw the original one, I can move the new one and then everyone, I am sure, will be happy with the new amendment.

Mr. Ballinger: I would like to move into your—

Mr. Philip: I believe that is unparliamentary.

Mr. Chairman: Do you have your amendment in writing?

Mr. Philip: It is printed. I am very well organized.

Mr. Chairman: Do you have copies sufficient for all the members?

Mr. Philip: I certainly do. I would not—

Mr. Chairman: Thank you. Give it to the clerk. We will circulate it to the members and then I will read it.

Mr. Philip: There we go. To show you exactly how seriously I take them and how attentively I listen to the members of the Liberal Party when they voice concerns, I also have some 26 pages of tables and research to document why this new amendment is in keeping with the concerns of the members. I am wondering, should I table this as well as the document?

Mr. Chairman: I think the rules require a compendium, but I think that is only if it is passed. He wants to table the backup material.

Mr. Philip: It is an excellent work done by our researcher, Susan Swift, whom I asked to get together some demographic information. She has

prepared this for me, but I feel it is useful information for the whole committee if the committee would like it.

Mr. Chairman: I understand you did not make sufficient copies for all the members. I do not have one. We have to await the preparation of a few more copies. Maybe I could borrow someone's so we can at least read it into the record and get it on the floor.

Mr. Philip moves subsection 4(1a) of the act, as set out in government motion, be amended by adding thereto the following clause:

"(d) shall, if the most recent federal census indicates that 5,000 or more residents of the municipality have as their mother tongue a specific language other than English and a local newspaper publishes in that language, publish the notice referred to in clause (b) in that newspaper."

Mr. Philip, would you like to speak to the motion?

Mr. Philip: Yes. The purpose of the original amendment was to make sure that—as you know, a number of the small-business people who have appeared before us have, as their mother tongue, a language other than English or French. We just felt it would be appropriate that any amendments a municipality might consider should at least be advertised in those newspapers these people read.

Ms. Collins correctly pointed out that perhaps the percentage we were basing on some other legislation dealing with English-French or the official languages kinds of considerations would be inappropriate and therefore we had to do some research. We feel, based on the demographics, that in each municipality the 5,000 is a reasonable figure. I have the demographics based on the 1986 census, taking into account 53 census divisions in Ontario.

You can take any area, but supposing we look, for example, at Hamilton. Out of the respondents of the 1986 census file, you would have Italian at about 11,000 male and about 10,000 female for a total of about 21,000. If you get down to Portuguese, you get 5,105, and Polish 5,000. So a majority of the languages of the business people would be covered under the 5,000 formula.

If you want to go to Metropolitan Toronto, you get similar sorts of figures, but of course more groups. I guess in the case of Sudbury, they would only have to advertise in English and French, according to our formula. I think if you get into the main population areas, for a majority of the merchants and other groups interested in this bill and this issue, you find that 5,000 probably covers it. We did not want to place an undue hardship on places like Bruce county and so forth to advertise in Vietnamese when there are no Vietnamese in Bruce county, according to the census, or where there were only five Filipino residents. We thought the 5,000 was a reasonable figure.

Ms. Collins: Can Mr. Philip please tell the committee, and I guess we will continue to use the city of Hamilton as an example, how many groups there would be over 5,000.

Mr. Philip: In Hamilton? Italian would be one group. Portuguese would be a second group over 5,000. Polish would be a third. That would be it.

Ms. Collins: I am sure it would not. I do not know what the statistics—

Mr. Philip: That would be it based on the Hamilton-Wentworth census division.

Ms. Collins: There are many more groups than that with a larger population than 5,000, I can tell you.

Mr. Philip: I am just going by the census.

Ms. Collins: I am sure Toronto lists a number of groups over 5,000. Is that correct?

Mr. Philip: In Toronto, I think you would end up with 14 language groups over 5,000, if I am not mistaken.

Ms. Collins: Maybe that is a better example for me to illustrate the concern I expressed the other day.

Mr. Philip: That is Metro Toronto, not Toronto.

Ms. Collins: It is the region that is making the decision anyway, under Bill 113. The concern I expressed was that you could have a number of groups in the municipality over 10 per cent of the population, each ethnic group, and in this case over 5,000 people in each category, and the municipality may have an application to open a store on a Sunday, possibly a drug store that is slightly over 7,500 square feet.

That drug store might be located in an area of the municipality where there is only one ethnic population affected and not all of the other groups, and yet you put the municipality to the expense of advertising in 14 different newspapers that are not targeting the people who live around the store that has made the application. That is the concern I expressed at the last meeting and I do not think this amendment addresses that concern.

Mr. Philip: Section 4 would allow a municipality to open up all the stores on Sunday. My concern is that if that is a move under way, people such as the Ontario Korean Businessmen's Association be clearly advised through their newspapers. I think that if you are undergoing such a major change, then it is reasonable to let the people know and that is what my amendment clearly does. Even in Metropolitan Toronto with its budget of 14 newspapers, if that were the case, and I will have to add them up again, the advertisement to let people know what is going on is not all that large.

There is nothing in this motion that would prevent a municipality from saying, "We're going to do something that is going to affect a particular neighbourhood and it does not have 5,000 of one particular group, but because there is a very large concentration of people who speak a particular language in a particular neighbourhood, we're going to advertise in their language anyway." I think many municipalities do that.

It simply acts as a base to ensure that if we are going to have stores, particularly the major stores, open on Sunday, the small business people who may speak a language other than English are informed. That was a concern I had with regard to the Korean businessmen's association, the Italian businessmen's association, Chinese perhaps, and some other groups that are quite sophisticated in their own languages. Many of them are recent immigrants,

however, and may not always read the English-language newspapers. This simply makes sure that they will be informed there are major changes.

Mr. Chairman: Could I draw your attention to the definition of "municipality." You might want to look at that with reference to your amendment. It would not allow what you have suggested, that you limit it. I just draw it to your attention.

Mr. Philip: What do you mean?

Mr. Chairman: A municipality is defined as "a local municipality, other than a local municipality within a metropolitan, regional or district municipality." If I understood what you were saying correctly, you were responding to Ms. Collins's statement by saying that if you found you were affecting just part of a municipality, you could in fact limit your advertising.

Mr. Philip: No, what I am saying is that the municipality could decide to advertise to anybody it wished, that this does not prohibit a municipality from doing additional advertising if there is a particular group that is under 5,000, but is particularly affected in a particular neighbourhood about a particular issue. All it is doing is setting out a guideline that says, "Look, if you're going to make major changes across the board, at least you're going to have to advise the citizens in their own language."

Mr. Chairman: Do any other members wish to speak to this matter?

Mr. Kanter: I do not know if you are doing some sort of rotation or if Mr. Hampton wants to go first.

Mr. Chairman: I am going to go back and forth between the various parties.

Mr. Kanter: I thought Ms. Collins just spoke. That was you just being questioned.

Mr. Chairman: Mr. Philip, actually. He responded. You are up, Mr. Kanter.

1630

Mr. Kanter: Thank you. I think Mr. Philip's motion is perhaps slightly less unreasonable than his previous effort and I appreciate the research he has undertaken. However, I still think the impact of his motion would be to really bind municipalities in a rigid and inflexible sort of way. I am taking his information at face value that in the city of Toronto there would be 14 different language groups involved. I suspect in Metropolitan Toronto there would be a considerably greater number.

Mr. Philip: I said Metro.

Mr. Kanter: Okay, that 14 is Metro. I think that would certainly cause some difficulties to the municipal administration. There are many other important matters affecting small business, many other provincial regulations, many municipal regulations, and I think that governments should, and I know

from my municipal experience that municipal governments do, advertise in the appropriate media.

Taking one of the examples he has used on a number of occasions, the Korean community, I do not know whether the Korean community is one of those that in the 1986 census has 5,000 people in that municipality having their mother tongue Korean. I know it is a rapidly growing community. I know it is a community where a number of the members of are involved in the business sector, and I suspect that because of some of the characteristics of that community, it may not have had 5,000 members speaking Korean as of 1986. These things change quite quickly. I know, in the case of that community, that it has been one of the most quickly growing communities in the Metro area.

I think, generally speaking, that municipal governments are going to be in a better position to know who the advertisements should be directed to. I think elected members of those councils are going to know the groups that are growing rapidly. They are going to know the groups that are going to be affected by the particular decision before them. I think Ms. Collins made an excellent point when, in her questioning, she drew out the fact that the opening could well involve a single store with a single location in a community that spoke perhaps primarily English or one language, not 14 languages. While the intent may be admirable, I think the effect would be totally impractical. Therefore, I urge members of the committee not to support this amendment.

Mr. Hampton: I think what has to be kept in mind is, first of all, that is a bare minimum standard. To echo Mr. Philip's words, a municipality, looking at recent census figures or recent immigration, may decide that it wants to advertise in a language or in a particular newspaper that has a particular language that would not be covered under the latest census. That is up to the local municipality or the regional municipality, as the case may be.

What this sets is a minimum standard. It is a minimum standard in more ways than just the 5,000 or more residents, because there are going to be situations where you may have 5,000 or more residents who speak a particular language other than English or French, and yet there is no newspaper in that language. That may be the case too. But again, the point is to set a minimum standard.

For instance, in Metropolitan Toronto, you may have 14 different ethnic groups that all have 5,000 or more people, but you may not have 14 newspapers published in the particular languages, so you are not setting out here in this amendment that every time you have 5,000 people or more who speak a specific language other than English, an advertisement must be made in that language. It does not say that at all.

What it says is that if there is a local newspaper that publishes in that language and you have 5,000 people or more who speak that language as their mother tongue, other than English, then you must publish. It is indeed a minimum standard. To make the argument that it is necessarily going to involve the local municipality or the regional municipality in a difficult conundrum each time and that it is going to have to publish in 10, 12 or 14 newspapers every time there is a proposed bylaw, I just do not think is true, because you simply do not have that many local newspapers in every case. Metropolitan Toronto might be the most severe case. After that, I suggest you are mainly looking at local newspapers that are circulated in perhaps three languages at most.

Many municipalities would not be affected by this at all. What we are speaking to, though—

Mr. Chairman: Thank you, Mr. Hampton.

Mr. Hampton: I am not finished yet.

Mr. Chairman: Oh, all right.

Mr. Hampton: Some members of the Liberal caucus may like to interject, but—

Mr. Chairman: No, I was going to call on Mrs. Cunningham. She has not had a chance yet, but that is okay.

Mr. Hampton: To say that this amendment necessarily complicates matters for all municipal councils certainly is not true. To say that it complicates matters for given municipal councils in every case is not true. To say that because you have 5,000 or more residents in a municipality who have a mother tongue that is other than English you have to advertise in every case is not true either; it is simply where you have 5,000 people or more who speak a given language other than English and you also have a newspaper in that language.

I submit that you are not complicating matters across the province a great deal at all. The metropolitan area around Toronto would be the only place where you would face any sort of complication, and I suggest that the council of Metropolitan Toronto certainly has the funds to be able to afford that and also is used to dealing with these kinds of complexities, as it is. So to set the minimum guideline is not to complicate matters unduly across the province or even in Metropolitan Toronto. It is a minimum standard, and as a minimum standard, it would be very easy to act on.

Mrs. Cunningham: I was interested to hear that the government was concerned about the complications with regard to this particular amendment, because this whole bill is complicated and unnecessary for the municipalities. From the very beginning, they have told us that. From the very beginning they have told us we do not have to get into this kind of detailed legislation.

Under normal circumstances where common sense would prevail, one would not even have to be speaking to this kind of motion at the provincial level. One would be speaking to this kind of motion at the municipal level, where municipalities are looking at their own processes. But as long as the government insists on making this kind of a motion, I suppose we may as well do it as well as we can.

Since in clause 4(1a)(b) we are talking about "shall publish notice of the public meeting in a newspaper having general circulation in the municipality at least one week before the meeting is to be held," I cannot see what the problem would be if in very special communities across this province, especially in parts of Metropolitan Toronto, one went a step further and tried to reach the citizens in that community who in fact are the very people who ought to be attending the local meeting if it affects them.

If you have as many as 5,000 residents of a municipality who have as their mother tongue a specific language other than English, I would think you

would very much want to publish in the local newspaper, if indeed it publishes in that language.

I do not buy into the complaints of the individual members of this committee—I might say Liberal members of this committee—who are concerned about whether or not this is too complicated or too cumbersome a matter for municipal councils. That is not their concern or they would not have the motion on the floor in the first place. I think if you are going to tell them what to do, which I do not approve of, you might as well take into consideration the fact that there are some special residents who do have a right to read these kinds of notices and respond to them in their own language. I would be in support of this amendment.

1640

Mr. Chairman: Any further speakers, or are we ready to vote?

Mr. Philip: I think I would like to respond.

Mr. Kanter: Mr. Chairman, I have a question of Mrs. Cunningham. Perhaps in keeping with the quest you established earlier today, could I ask one question of Mrs. Cunningham?

Mr. Chairman: It is up to her. Do you want to allow Mr. Kanter to ask a question?

Mrs. Cunningham: To help Mr. Kanter, I will say yes.

Mr. Chairman: Thank you, Mrs. Cunningham.

Mr. Kanter: As I understand it, Mrs. Cunningham was a member of the board of education in the city of London. I was just looking at the figures here for Middlesex county, which I presume includes the city of London. I am not sure; some of them are included, some are excluded?

Mrs. Cunningham: Yes.

Mr. Kanter: The total population of Middlesex county is given as 332,000, so that would probably include the city of London and some of the surrounding areas. I notice that several communities here, the Dutch community, for example, has 4,820, very close to the 5,000 figure.

If Mrs. Cunningham is so keen on this concept, I am wondering if it was her practice when she was a member of the school board in London to ensure that notices affecting children in the area went out in Dutch, Italian, Portuguese, German and the—

Mr. Chairman: I am not sure that question is fair, with all due respect.

Mr. Kanter: I am just wondering if that was her practice when she was on the school board in London. I think that is a relevant question.

Mr. Chairman: I do not—

Mrs. Cunningham: The answer to the question is no.

Mr. Kanter: Okay. Thank you very much. I appreciate that.

Mr. Chairman: Mr. Philip, would you like to respond?

Mr. Philip: This government spends, and indeed the predecessor government spent, all kinds of taxpayers' money buying ads in each of the ethnic newspapers. There have been inquiries before the standing committee on public accounts. There have been comments by the Provincial Auditor. There have been scandals about the government spending money in newspapers that in fact had false circulation figures or were not reaching any kind of targets or objectives.

Whenever we question the government on it, it always answers: "Well, it is important in a pluralistic and multicultural society like Canada—we are not the melting pot of the US—that we at least reach the people and give them information which is important to their day-to-day lives."

What could be more important to a businessman than the fact that you may be bringing in changes that are going to dramatically affect his business, or in the case of British Columbia, in the case of the Korean businessmen out there, put them out of business?

All we are asking is that you say to places like Metropolitan Toronto—

Ms. Collins: And Hamilton.

Mr. Philip: —and Hamilton—

Interjection: Niagara.

Mr. Philip: Well, okay. If you want to play that game, to people of Stormont, Dundas, Glengarry, Prescott and Russell counties, Ottawa-Carleton regional municipality, Grenville and Leeds counties, Lanark county, Frontenac county, Lennox and Addington county—

Mr. Chairman: I think the message has gotten through to the other members, Mr. Philip.

Mr. Philip: —Hastings county, Prince Edward county, Northumberland county—oh, I like Northumberland county. It is a very—

Ms. Collins: You do not think for a mature politician—

Mr. Ballinger: Not anything nasty again?

Mr. Philip: I am simply—

Mr. Chairman: Would you get on with your response?

Mr. Philip: If Ms. Collins feels that I have left out anybody, I will read them all.

Mr. Chairman: No, it is not necessary.

Mr. Philip: I have all the censuses here. I can cover them all. I would be happy to do so.

I am saying that my constituents, those 17,520 people, according to the

1986 census file whose native language was Punjabi, those people have a right. I know many of these people and I know that on occasion they come to me and I have to get my volunteers to speak Punjabi, but these are still successful businessmen operating restaurants and other facilities in the great riding of Etobicoke-Rexdale. Those people have a right, I think, to be informed if the municipality of Metropolitan Toronto plans on making a major change which is going to affect their livelihood in the same way, I think, that the 108,000 people who speak Portuguese, many of whom have stores, have a right to at least have an ad in the Portuguese newspapers.

I think the 289,770 Italian-speaking businessmen have a right to at least have a major change advertised in Corriere Canadese. If it is the position of the Liberals that they only want to buy propaganda for the government at taxpayers' expense in these ethnic newspapers, but that for something that is controversial or may affect their daily lives in a very direct way, they do not believe these people should be informed in their own language—they cannot have it both ways. Either the advertising by this government in those newspapers is for the legitimate purpose of informing people of laws that are being changed about them, and that is the government's position, or it is illegitimate, it is just being used for gloating and for getting across government propaganda.

If it is legitimate for the provincial government when it has substantial changes, when it has important messages about what the government is doing, to advertise in these papers, then surely it makes some sense that if a municipality is going to make a substantial change that will affect business people whose primary language is other than English or French, it be advertised in those newspapers as well. That is what my amendment does. If the Liberal members who try to spout multiculturalism all the time do not wish to put their vote where their mouth is, that is their business, but rest assured that we will advise all those newspapers if you vote against the bill. We will advise them that this is what you think of them, and you can take the political consequences of it.

Mr. Chairman: Thank you, Mr. Philip. Are we ready to vote? I think we are. Shall Mr. Philip's motion carry?

Mr. Philip: May I have a recorded vote?

Mr. Chairman: You should ask before, but we will allow a recorded vote.

The committee divided on Mr. Philip's motion, which was negatived on the following vote:

Ayes

Cunningham, Hampton, Philip.

Nays

Ballinger, Chiarelli, Collins, Hart, Kanter, Sola.

Ayes 3; nays 6.

Mr. Chairman: Okay. We now return to Mr. Kanter's original motion.

Mrs. Cunningham: Could I ask a question on a couple of things, Mr.

Chairman? We usually chat about it at the beginning, but I was not here and you may have already done this. I understand we are meeting today and tomorrow.

Mr. Chairman: After routine proceedings.

Mrs. Cunningham: What hours are we meeting?

Mr. Chairman: After routine proceedings. That is why we were delayed in getting started today, because there was an emergency debate requested and until that was dealt with, routine proceedings were not over. Actually, I suppose we could set it for a specific time. That might be—

Mr. Philip: Do you know or maybe the clerk can find out whether Ministry of Government Services estimates will take place tomorrow? As the critic, I have to handle that.

Mr. Ballinger: It is supposed to take place today.

Mr. Philip: There is an important debate going on.

Mr. Chairman: Normally, routine proceedings are over by when? About 4:30?

Mr. Kanter: About 3:30.

Mr. Chairman: Perhaps we could set it for a specific time of 3:30 rather than interrupting important events that take place down the hall and in the House.

Mr. Philip: It is difficult for members to participate in the thing called the scrum.

Mr. Chairman: We do not want to interfere with that, Mr. Philip. If we set 3:30, it means that those of us do not rush down here who are not involved in scrums and—

Mr. Philip: Except that some members have to, as I did today, present reports in the House. I had two very important reports that Mr. Ballinger helped to write and I am sure he would not have wanted me not to present those reports in the House today. I just may have a report tomorrow. One never knows what chairmen of committees will do.

Mr. Ballinger: I noticed how much media exposure it gave you, too.

1650

Mr. Chairman: Obviously, I need unanimous consent to have you agree on this. It would normally be after routine proceedings. Okay, so we do not have unanimous consent. All right.

Mrs. Cunningham: How late do you go?

Mr. Chairman: Until six o'clock, until the House adjourns. I gather that if they adjourn early, we adjourn early. Do we?

Clerk of the Committee: You should, but you do not have to.

Mr. Chairman: I am told we should, but we do not have to; but we will.

Mrs. Cunningham: Can I have another question, again on procedure? Why are we not meeting in the room where we are televised?

Mr. Chairman: That is up to the Speaker's office, I guess. Is it?

Clerk of the Committee: I can tell you that when the House is in session, this committee regularly meets Monday and Tuesday afternoons in this room; that is just routine. If the committee wishes to change and go to another room for the purposes of clause-by-clause, then I can attempt to arrange that. But without direction from the committee, it will be this room.

Interjection.

Mrs. Cunningham: No. I do not think we need it as much as the public seem to think they do. They are trying to find out what is happening. I do not know whether you are getting calls. I bet Mr. Kanter is.

Interjection.

Mrs. Cunningham: Someone told me that the committees were—there is a separate channel.

Mr. Chairman: Oh, I am sorry; excuse me just a second. I understand from Hansard that the television in the Amethyst Room is the same channel as—

Clerk of the Committee: Yes, but maybe I could clarify that. Committees are broadcast on Fridays.

Mr. Chairman: So in other words it is stale dated, is it?

Clerk of the Committee: They run the week of committee meetings that occurred in the Amethyst Room on Fridays.

Mr. Chairman: So they show up only on the Friday edition.

Mrs. Cunningham: I see. So we really only have one live channel as far as delivery to the public is concerned.

Mr. Chiarelli: Let's sit on Fridays so we can be televised.

Mrs. Cunningham: No, I am being serious about this. If every committee could be televised so the public could see what was happening, that would be ideal. That is not possible.

Mr. Ballinger: Most people tell me they find it boring.

Mrs. Cunningham: Well, some do. On this particular issue they seem to be thinking it is pretty important. All we are doing is getting calls saying, "Where are you now in the debate on clause-by-clause?" I try to describe to the best of my ability where we are in the debate on clause-by-clause.

Mr. Chairman: Would you explain it to us?

Mr. Kanter: How much progress do you tell them we have made?

Mrs. Cunningham: Not a lot. But that was a sincere question, Mr. Chairman.

Mr. Chairman: I think it is a fair question.

Mrs. Cunningham: I just wondered how it all worked. If the clerk is telling us that on Fridays the public would be able to see it if we were sitting on Fridays, that will be the answer I will give them.

Mr. Chairman: I do not want to mislead you. I think if it were televised during the week, it would be shown on Fridays. That is really what we are saying.

Clerk of the Committee: Yes, that is what I meant.

Mrs. Cunningham: Oh. So if we were meeting in that room, they would then televise it on the Friday?

Clerk of the Committee: They would air it.

Mr. Chairman: They could sit down on Friday morning from 10 o'clock in the morning until midnight and watch us in glorious colour, I understand.

Clerk of the Committee: All day.

Mr. Chairman: Is that right, all day?

Clerk of the Committee: Yes.

Mrs. Cunningham: I suppose one of the real problems has been that we have not been able to get the Hansard. I believe it is quite far behind, is it not, now? At least that way, you can tell people what has happened and send it to them or whatever, or they can come and pick it up. So is there a problem with the Hansard?

Clerk of the Committee: There was a delay in some section of it that was being handled by an outside contracting firm; we do not have those yet. Some were delivered to my office this morning, which I have not looked at yet.

Mrs. Cunningham: Okay. Well, all I know is that last week we could not get them for more than—we do not have them yet. It is handy. When people call, you say: "The Hansard is here. You can come and see what was said and pick it up." I thought that was a service we could provide. Instead of spending all this time on the telephone, we can tell them to come and get it. Are you saying the Hansard will be ready the next day or a day later?

Clerk of the Committee: It will not be the next day. When the House is sitting, the House has priority in terms of getting its Hansard printed.

Mrs. Cunningham: You see, that is my question.

Clerk of the Committee: Yes, committees end up being delayed.

Mrs. Cunningham: So they really cannot see us and they cannot get the Hansard for more than a week. Would you say that is fair?

Mr. Chairman: We can help them along by limiting our words.

Mrs. Cunningham: Listen, if it is not printed somewhere, it is very difficult some days when you leave this room really to understand what anybody said, so I would prefer to have it in print, to hand it to somebody. I am quite serious about saying that if we could have it in a couple of days, I think it would help some of us. I am sure all of you get these kinds of requests.

Mr. Chairman: Maybe we can leave that with the clerk and she can see what she can work out now.

Mrs. Cunningham: If she has a specific request from the committee, I am sure it helps her in her work, so I will suggest that Mr. Kanter or yourself, whoever is responsible, ask, Mr. Chairman.

Mr. Chairman: I will ask the clerk to look into the matter.

Mrs. Cunningham: You know, make this committee have some priority. There is public interest and it just helps us in our work. I just simply cannot return all these phone calls, describing what took place.

Mr. Chairman: Okay. Thank you very much, Mrs. Cunningham.

Mr. Kanter: I would support your question.

Mr. Chairman: I think that is good.

Mrs. Cunningham: Thank you. It would speed it up a bit.

Mr. Chairman: Okay, now that we have resolved that issue, hopefully, we now move back to a motion. Did I read that? Is that introduced already? Yes, it is on the floor. That is Mr. Kanter's motion, an amendment to section 4 by adding subsection 4(1a). We have already read that into the record. Is there any discussion on that motion?

Mr. Philip: Let's make sure we have it first, okay?

Mr. Chairman: All right. It has clauses (a), (b) and (c) components to it. It is the one you were amending by your motion.

Mr. Kanter: Just to clarify, that does have the amendment in it, I believe, in clause (b), "notice of the public meeting in a newspaper."

Mr. Chairman: Yes, 30 days.

Mr. Kanter: Yes, 30 days, as moved by Mr. Philip and it is accepted.

Mr. Hampton: Can we have that read?

Mr. Chairman: All right.

Mr. Kanter has moved that section 4 of the act, as set out in section 4 of the bill, be amended by adding thereto the following subsection:

"(1a) Before passing a bylaw under subsection (1), the council of a municipality,

"(a) shall hold a public meeting in respect of the proposed bylaw;

"(b) shall publish notice of the public meeting in a newspaper having general circulation in the municipality at least 30 days before the meeting is to be held; and

"(c) shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed bylaw."

Mr. Kanter, I am not sure if you spoke.

Mr. Kanter: I did speak on this, Mr. Chairman.

Mr. Chairman: Are there any other members who wish to speak to the motion? Seeing none, are we ready to vote on the matter? Shall the amendment, as proposed by Mr. Kanter, carry.

Those in favour?

Those opposed?

Mr. Kanter: Mr. Philip voted both ways.

Interjections.

Mr. Kanter: Perhaps we would prefer a recorded vote.

Mr. Chairman: I declare the motion carried. Have we dealt with section 4?

Mr. Kanter: There seems to be some confusion who was voting which way, so I would like to call for recorded vote on that.

Mr. Chairman: We have it. Mr. Philip raised his hand.

Mr. Kanter: Which, both ways? Mr. Chairman, rather than getting into—

Mr. Chairman: I read the vote as Mr. Philip, Mr. Hampton and Mrs. Cunningham as having voted against it.

Mr. Philip: How can you read the vote that way when no one called for a recorded vote?

Mr. Chairman: I am just answering Mr. Kanter.

Mr. Kanter: We ought to have a recorded vote on this matter, Mr. Chairman. I would like to call for a recorded vote.

Mr. Chairman: All right.

Mr. Philip: You are supposed to call for a recorded vote before the vote is taken.

Mr. Kanter: You are absolutely right, Mr. Philip.

Mr. Chairman: The vote has been taken. The clerk advised me I can put the question again, so we will put the question.

Mr. Ballinger: Before you put the question, I will call for a recorded vote.

Mr. Chairman: Shall the amendment by Mr. Kanter carry? Those in favour?

Clerk of the Committee: Mr. Kanter, Ms. Hart, Mr. Sola, Mr. Chiarelli, Ms. Collins, Mr. Ballinger.

Mr. Chairman: Those opposed?

Clerk of the Committee: Mrs. Cunningham.

Interjection: Two abstentions.

Mr. Chairman: You cannot abstain. You must vote, one way or the other.

Mr. Hampton: Do we not have a free vote around here?

Mr. Chairman: You can abstain when you leave this room, if you like, but when you are in here, you vote.

Interjection.

Mr. Chairman: No, our rules require them to vote. Those opposed? We will try not to have your hand up for too long, Mrs. Cunningham.

Clerk of the Committee: Mrs. Cunningham, Mr. Philip, Mr. Hampton.

Mr. Chairman: Thank you very much. I declare the amendment carried. We will—

Interjections.

Mr. Philip: As opposed to the charade then that you are trying to perpetrate on me.

Mr. Chairman: We are doing so marvellously here. Let's carry on. We will go back to section 4. There is a further government motion for subsection (2a).

Mr. Kanter: We do have a further amendment to section 4 of the act, as set out in section 4 of the bill.

Mr. Chairman: Mr. Kanter moves that section 4 of the act, as set out in section 4 of the bill, be amended by adding thereto the following subsection:

"(2a) A bylaw or regulation under this section does not apply so as to prevent the sale or offering for sale of goods and services exempted under subsection 3(5) or 3(7) from the operation of section 2."

1700

Mr. Kanter: I think it might be necessary for a brief explanation of that amendment. The intent of the amendment is to permit—

Mrs. Cunningham: Speak clearly and distinctly, please.

Mr. Kanter: I will try to do that. First, I would like to try to find the particular section of the bill I am referring to in the existing act.

The intent of this motion is to permit restaurants and tourist establishments to stay open so that they cannot be closed by local municipalities. As to the particular subsections I am referring to in the existing act, subsection 3(5) relates to the sale of "liquor under the authority of a licence or permit issued under the Liquor Licence Act of goods or services under the authority of a tourist establishment licence issued under the Tourism Act." Subsection 3(7) relates to "prepared meals, living accommodation, laundromats and other coin-operated services, rentals of vehicles or boats, servicing and repair of vehicles or boats."

We normally have available, and we will certainly try to make available to members if it will be helpful—I will make my copy available—the existing Retail Business Holidays Act which includes these provisions.

The intent of this amendment, I have tried to make as clear as I can, is so that licensed restaurants and tourist establishments—those that prepare meals and provide living accommodation—will continue to be able to do it on Sunday so that a municipality cannot foreclose these activities.

As members will recall, we had a number of representatives here before us from the tourism industry, people from Motels Ontario who appeared in Peterborough and people from Tourism Ontario who appeared, I believe it was in this room, although it may have been in the Amethyst Room. There was one gentleman who came who had a tourist establishment, I believe, on the highway north of Sudbury, who expressed some concern about this provision.

It is in recognition of their concerns and the fact that we had no intention of permitting the possibility of municipalities shutting down these types of operations, and it is on that basis that we have moved this amendment.

Mr. Chairman: Do any other members wish to speak to this additional amendment?

Mrs. Cunningham: I have a couple of questions before I speak. How does this then fit into the clause that says the present status should be appealed by 1990?

Mr. Kanter: I think I can explain that situation. That would be the amendment to the so-called tourism exception where an activity is essential for the development of tourism under the current bill. In most cases, those areas might include stores or supermarkets or large stores or small stores. They will have to be reviewed by their local municipalities. Local municipalities may decide to shut down activities in those areas, shops, things like that.

The only type of activity they would be precluded from closing would be hotels and restaurants, the list I read. For example, in the Metropolitan Toronto area, the area I am most familiar with, Metro would be required to

review the operation of Harbourfront, Chinatown and Mirvish Village. The bulk of the businesses in those areas, almost all of them, are shops and stores the municipality could decide to shut down or could decide to leave open. The only restriction on their power to close would be the fact that hotels and restaurants would be allowed to remain open wherever they were located.

Mr. Chairman: Just for clarification, are they the items that are licensed actually under some act that is called the Tourism Act?

Mr. Kanter: There are two provisions under subsection 5. It is "goods or services under the authority of a tourist establishment licence issued under the Tourism Act." Under subsection 7, it is goods and services sold or offered in connection with "prepared meals, living accommodation, laundromats...rentals of vehicles or boats, servicing and repair of vehicles or boats.

Mr. Chairman: That is the second one. What you are saying is that does not preclude a municipality from reviewing a tourist area that has been set up under a bylaw?

Mr. Kanter: It does not preclude them from examining that, and most of those tourist areas contain stores that do things other than sell food or other than hotels.

Mr. Chairman: Does that clarify the issue for you?

Mrs. Cunningham: There is another part to my question. The example you refer to, and you may not have meant to refer to it, was a fishing chalet kind of hotel, dress shop, four or five stores, as that person just north of North Bay mentioned to us. He described his exemption that day, I thought in chatting with him, as one under the municipality. That would not fit into these subsections, 3(5) or 3(7), at all, would it? That would not help him.

Mr. Kanter: I believe the answer to the question is no, but that is the type of question on which I might like to call upon the services of Mr. Spring, our legal adviser. You might put the same question to him.

Mrs. Cunningham: My problem with this amendment is, how do you make the distinction and who is really going to be affected? The very example you used was the one I thought would have been exempted, but maybe Mr. Spring knows about that. I do not know.

Mr. Kanter: Perhaps you could redirect the question to Mr. Spring.

Mr. Chairman: Mr. Spring, would you come up and take a seat at the witness area? Did you hear the question by Mrs. Cunningham?

Mr. Spring: Yes, I did. It is difficult to give an opinion, based on the fact that we do not really have the facts as they would pertain to that particular type of operation. If you presuppose an operation that has a lodge or a fishing encampment, those types of operations would—I confess to some speculation now—be the type of operations that might well be licensed under a tourist establishment licence.

If I heard Mrs. Cunningham correctly, the deponent in front of the committee in the North Bay hearing, and I was not present there, said he

thought he was covered under the municipal option or at least under the municipal bylaw exemption?

Mrs. Cunningham: Yes, he was the person who was very concerned about having to go back and, to remain open, having to ask the municipality. I read this and was listening to Mr. Kanter's explanation. This particular amendment would not help him, because this one refers only to people who, by right of the act, have been excluded, not because of tourism, but because of the Liquor Licence Act, the Tourism Act or because of the meals, the five things Mr. Kanter stated. That is the answer to the question you asked me, yes.

Mr. Spring: There may well be part of that establishment, some retail establishment, that is not caught by these sections that would require a municipal bylaw under the current section 4, to permit it to open.

Mrs. Cunningham: That is what I was thinking, as he described his dilemma that day, and I think it did pertain to selling clothing. Most of us know these shops attached to hotels are not just little corner store kind of things where you are selling gum and newspapers.

Mr. Chairman: If you look under page 37 of the brief prepared by Susan Swift on all the briefs that were presented, I think you will find that is the one you are referring to.

Mrs. Cunningham: I am trying to be able to answer that person's question, because that is one we had written down as being a concern.

Mr. Chairman: Page 37; it has "Bay" under it. That was not "The Bay." Is that North Bay?

Ms. Swift: The "Bay" designation is for "The Bay."

Mr. Chairman: I thought it was North Bay.

Ms. Swift: No, that was contained in the brief they presented to the committee.

Mrs. Cunningham: Under the little definitions, I do not think that particular group showed up here at all.

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Ms. Swift: I think, Mrs. Cunningham, it might have been Bill Scully.

Mrs. Cunningham: Please say it again.

Ms. Swift: Bill Scully—no, pardon me, Bill Biggs.

Mrs. Cunningham: Yes.

Ms. Swift: He was the gentleman who appeared before the committee and was given 10 minutes to speak. He was not on the agenda, as I recall.

Mrs. Cunningham: No, the one I am referring to was on the agenda and there were two gentlemen present. He described this sort of little shopping area.

Mr. Kanter: That was Tourism Ontario Inc.

Ms. Swift: It was Tourism Ontario?

Mrs. Cunningham: It was two specific people, small businessmen, not representing any big group. They were colleagues. Oh, it was Tourism Ontario that had the—that is correct.

Clerk of the Committee: Tourism Ontario brought with them a gentleman who ran a business up north.

Mrs. Cunningham: That is right.

Mr. Chairman: That was up on Highway 69.

Mrs. Cunningham: I am very impressed with the memory of the clerk as opposed to the elected member.

Mr. Chairman: I told her. I want that on the record, I told the clerk. She could have shared it, anyway.

Mrs. Cunningham: So, where will we find that? Well, we will not find it in here.

Ms. Swift: No, not referred to specifically. It would be summarized as one of the recommendations.

Mrs. Cunningham: I do have notes on that particular one and I did chat with the gentleman after. I would not be able to advise him after I read this amendment whether this would help him or not.

Mr. Kanter: If I could just further elaborate on my answer? I think quite clearly, it would enable the bulk of his operation to continue without the possibility of any municipal interference. But certainly enable the fishing camp, as Mrs. Cunningham has described it, to continue. I think the question that she puts, and it is a valid question, is whether all parts of the operation, the gift shop, for example, whether that is run under the authority of the tourist establishment licence. Perhaps we could ask our legal counsel to check that part of her question. I do not know the answer to that. I do not think anyone here does. It might help Mrs. Cunningham to know if all parts of the operation are covered by that tourist establishment licence. If that turns out to be the case, that might perhaps alleviate some of her concerns. I cannot answer that question here. I do not think legal counsel can today and perhaps if we stood it down and got that answer, that might be helpful for Mrs. Cunningham.

Mr. Chairman: My recollection was that was established under a tourist designation by the municipality, the entire operation as I recall.

Mrs. Cunningham: If that is the case, Mr. Chairman and Mr. Kanter, and we are all searching for what this really means, what I am trying to avoid is any roping-off because that is what you are doing if you close this part of the operation and that part of the operation and we are subject to criticism by these very large super drugstores, in all fairness.

I am also trying to avoid groups or business people who do in fact have this tourism exemption who could also have this Liquor Licence Act—they would have to have that any way if they are serving alcohol. They are working under

the Liquor Licence Act as well as the municipalities in a section 4 exemption. I just do not know how this helps both of them. In fact, it does not help anybody who is working under the present act or the section 4 exemption.

Mr. Kanter: I understood the first concern of Mrs. Cunningham and I probably share it. I did not understand her second concern at all.

Mrs. Cunningham: Well, really, I suppose it is all the same. I was thinking of this big fishing camp that this person described.

Mr. Chairman: What she is saying is that if some are allowed under tourist licence and some of them are allowed under municipal tourism, you get into the roping-off situation. I think that is what you said.

Mrs. Cunningham: Well, it is all the same, Mr. Kanter, meaning that if he is operating his restaurant and hotel under the Liquor Licence Act and is therefore, open in fact, he may even be able to open a little—for want of a better word—tiny convenience store that you see in particular hotels. They are open on Sundays as well. He may even be able to sell T-shirts and whatnot under the Tourism Act because he has mugs and things like that. He may also have this municipal option for two or three other parts, or someone else may have the other part of this whole tourist area, meaning the tourism exemption. Therefore, we have four or five parts of the establishment open. It may be his establishment or it may be somebody else's. Four or five other parts that the municipalities recognize as being tourism-exempt areas will have to shut.

This particular motion, of which I understand your intent, will therefore work at closing part of this tourist area, keeping the other part open and maybe even roping off part of the man's establishment, which we are trying to avoid.

Mr. Kanter: I think I have tried to express the intent of our motion, which is to clarify things for people in that situation. I recognize that Mrs. Cunningham has raised a possible concern as to whether any part of such an establishment could potentially possibly be closed by a municipality.

I would like to refer the question to legal counsel to investigate. I think he could probably undertake to do that reasonably speedily. I do not know if he could have an answer for tomorrow afternoon, but I would certainly ask him to inquire as quickly as possible. I think that would be the best way of dealing with this inquiry.

Mr. Chairman: Is Mrs. Cunningham satisfied with that?

Mrs. Cunningham: I am satisfied. Could you bring back a couple of examples which would help us, as well, in your investigation—something practical that makes sense? If we have a practical problem, we should know what it is.

Mr. Kanter: Perhaps the legal counsel could respond to that inquiry.

Mr. Spring: I had a question, to help myself, if I may.

My question is actually two-fold. The first part is whether or not the establishment we are referring to is the establishment known as the French River Trading Post.

Mr. Kanter: Yes.

Mr. Spring: That might help for some clarification. Second, I take it that the question you would like researched is whether, under a mix, if we can call it that, of provincial law and a municipal bylaw, some part of a conglomeration of retail business establishments might be required to close and other retail business establishments within that conglomeration might be permitted to open, depending on the application of the municipal versus the provincial law. Is that correct?

Mrs. Cunningham: Yes, that is correct.

Mr. Philip: It seems reasonable that until we have the answers to that, we should not proceed further with this amendment.

Mr. Kanter: I have agreed to stand down that motion until we have the answer to that question.

Mr. Philip: Why do we not adjourn until such time as we have the answer? We can reconvene tomorrow.

Mr. Kanter: I understand the proposal by Mr. Philip. However, I suggest that we can proceed to the next motion. I know that we have an additional amendment to section 4. The opposition parties may, as well. I suggest we continue in the normal course of business until adjournment time today. We started late. I think we should use the time available to us.

Mr. Philip: If we are going to proceed in an orderly fashion, it seems that we should deal with them one at a time. Section 4 is fairly complicated. There are a number of amendments and amendments to amendments. It seems reasonable that we should get the information and proceed in the numerical order.

Mr. Kanter: If I might, we have tried to be very accommodating on this committee. For example, we did not deal with the drugstore question because one of the opposition parties had additional information to bring to bear. We have been very flexible on scheduling of things. I certainly agreed, and do not want to rush on this section if there is more information we require, but I urge members of the committee to be diligent in their examination of this report. There are several other motions—one other motion the government has put, another amendment to section 4 which I think we could debate at this time. There may be other opposition motions to section 4, and I think they should be debated at this time.

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The Vice-Chairman: Perhaps I could make a suggestion for the committee to consider if it is the committee's wish to stand down section 4. Rather than proceed further with subsequent amendments, we might go back to section 1 or section 3, which have already been stood down.

Mrs. Cunningham: I thought we were just going to proceed to sections 5 and 6.

The Vice-Chairman: We could do that.

Mr. Kanter: If it is the will that we proceed to section 5 or section 6, that would be satisfactory.

Mrs. Cunningham: We may have more questions on it. That is all, Ron, and you would give all your criteria or rationale, I mean.

Mr. Kanter: Just to be clear, the other government motion on section 4 relates to a municipal plan, and it is unrelated, I believe, to the area of inquiry on tourism.

Mrs. Cunningham: That is correct, but it is all part of the same section.

Mr. Kanter: It is all part of section 4, no question. If you want to proceed to section 5, that would be fine.

The Vice-Chairman: Is it the committee's wish that we proceed to section 5?

Mr. Kanter: We have a government motion, which I think is essentially in the nature of a technical amendment.

I move that subsection 6(2) of the act, as set out in section 5 of the bill, be struck out and the following substituted therefor—I am going to read it and then explain it.

Mrs. Cunningham: Why are you not doing sections 5 and 6 first as opposed to subsection 6(2)? You do not want to do it in order?

Mr. Kanter: Are you referring to the amendments to section 4 about a municipal plan?

Mrs. Cunningham: Yes.

Mr. Kanter: I would like to have done those, but I understood that some people did not want to debate section 4.

Mrs. Cunningham: That is what I was talking about. You do not want to do that?

Mr. Kanter: There seems to be some confusion there.

Mrs. Cunningham: That is what I meant. Why are we not just continuing with section 4?

Mr. Kanter: That would be satisfactory. That is fine. Why do we not do that? I would like to continue with section 4.

The Vice-Chairman: Very well.

On section 4:

Mr. Philip: I have a motion to section 4 as well. Which one comes first? Mine is an amendment to subsection 5(1) of the present act, as outlined in section 4 of the bill.

The Vice-Chairman: I am advised by the clerk that the government motion goes first.

Mr. Kanter: Thank you, Madam Chairman, with the advice of your advisers.

The Vice-Chairman: Mr. Kanter moves that section 4 of the act, as set out in section 4 of the bill, be amended by adding thereto the following subsections:

"(5) The council may establish a plan setting out the criteria to be considered by it in determining whether a bylaw should be passed under subsection 1.

"(6) If the council adopts a plan, it shall ensure that the plan is made available to the public by publishing it in a newspaper having general circulation in the municipality."

Mr. Kanter: If I may speak to this motion very briefly, a number of people came to us and suggested that they were concerned about the municipality acting on an ad hoc basis, and it is our view that by enabling municipalities to pass a plan that municipalities could, if they wished, look at this issue on a coherent, consistent basis. They might indeed also look at the regulation of shopping hours during the week through this plan and that in a manner somewhat similar to an official plan, which might guide a council in terms of decisions on zoning bylaws, this could give some guidance to members of council and members of the community as to the general approach that would be taken. It might set out criteria such as tourism, multiculturalism, the nature of the labour force or proximity to borders, or indeed any other criteria that a municipality might feel was appropriate to that municipality. Those are our introductory comments on that.

Mr. Philip: I have an amendment to this. I am writing out the amendment for you, but I will give you the gist of it.

The Vice-Chairman: Mr. Philip moves that section 4 of the act as set out in section 4 of the bill be amended in subsection 4(5) of this motion by striking out the word "may" and substituting therefore "shall."

Mr. Philip: May I speak to my amendment?

The Vice-Chairman: Yes.

Mr. Philip: Since it is the position of this government to give up all of its responsibility to the municipalities without giving them any criteria by which they will judge whether to make substantial changes affecting the lives and businesses of our population, it seems reasonable that it should go all the way and at least direct those municipalities to establish criteria and to do fully the job which this government is so obviously irresponsible in not doing itself.

I, therefore, think it is reasonable that if people are going to have laws passed affecting their lives, that at least there be criteria on it and that it not be open to capriciousness. Also, in the case where there may be a wish to have a challenge to the courts, where a person has wrongfully had his business or other rights affected by a capricious decision by a council, the question, then, in the court would have to be what were the criteria by which these decisions were made. It seems reasonable, then, that a council should establish the criteria whereby it is going to determine changes to the bylaw under this section.

The Vice-Chairman: Any other members wishing to engage in the debate?

Mr. Kanter: If I might respond to Mr. Philip's amendment on a number

of bases. First, in terms of the philosophy of the bill, we are suggesting that it is up to municipalities; indeed, the possibility of criteria, I think, was already in the bill under clause 4(4)(e) where a municipality could classify retail business establishments by any other criteria. What we are doing, in essence, is highlighting the philosophy of a bill which leaves these decisions and the question of whether the municipality wants to establish criteria up to municipalities.

Second, there is a question of practicality. I think many large municipalities might well want to establish a plan. I think many small municipalities might find it impractical or they just may not wish to do it. I have discussed this particular amendment with a number of members who represent smaller areas of the province; one of them Marietta Roberts, who was a member of this committee, who talked about the large number of very small municipalities in her riding, most of which do not employ professional planning staff at all.

Third, there is the question of the old act, where the province did attempt to set out one criterion, tourism; it was often ignored. I think, as we saw in one of the cases involving the fruit store in Mississauga, setting out criteria on the provincial level does not have any legal consequences. It does not mean anything; the court is not going to look very far to see if that criterion was actually observed.

I just want to make one additional comment in terms of the effectiveness of municipal criteria should a municipality decide to establish such a plan or policy. In the city of Toronto, which I was familiar with, we had policies on a number of subjects. One of them was a conversion of rental accommodation to condominiums. This policy was in effect for a number of years, it was very effective and it had a very dramatic impact. People just did not come to us with these applications at all for a period of a number of years.

I am suggesting that the motion we have moved will be effective; it will be practical. It could be, for example, if municipalities have this power, that one municipality takes the lead; it might be that a municipal association, the Association of Municipalities of Ontario or perhaps an ad hoc group, might spring up and develop a model plan that a number of municipalities might adopt.

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We feel this is a matter that local municipalities could adopt if they wish to deviate from the provincial plan. I want to emphasize the fact that the province has set out its plan, which is no Sunday shopping; it is only in the event that the municipality wants to deviate or derogate from that that the municipality can, and then again we are offering municipalities a choice. They can do it through a plan of their own or they can do it on an ad hoc basis if they wish.

Mr. Philip: May I ask a question of Mr. Kanter? On his motion, if the word "may" is used rather than "shall," what power is he giving to the municipality that it did not already have under the Municipal Act or any other authority that may be vested in it?

Mr. Kanter: As I think I answered in my remarks, the power to set criteria, to set criteria in advance, to look at Sunday shopping in a holistic sort of way, may have already existed in the bill. However, we believe this

clarifies it, makes it more obvious, and may have the effect of encouraging some councils to take this particular action.

We are not suggesting this is a dramatic change from what was contained in the act, but we are suggesting that this puts it in a much clearer light, the ability of councils to establish Sunday shopping criteria for Sunday shopping.

Mr. Philip: Mr. Kanter seems to be suggesting that somehow by putting something in the bill, giving them some powers which they already have anyway, somehow he will act as the Holy Ghost and inspire them to do something which they already have the power to do anyway and which many councils in fact do on a series of matters.

I ask Mr. Kanter, as a former municipal councillor, is it not common for council in judging a number of matters to establish in advance the criteria it is going to use in making a particular decision? Is that not a common practice on most councils or at least on the council that he was a part of?

Mr. Kanter: It is a practice followed by many councils.

Mr. Philip: So what the member is doing in this amendment is giving them the power to do what they are already doing anyway.

Mr. Kanter: What we are doing, and there may be other members of our caucus who wish to speak to this, is making it very clear that a council does have the power to establish a policy in this regard. I know that the council I was on, certainly the local council, the city of Toronto council, did establish policies in various areas. It did not happen quite so frequently perhaps at Metro, but we want to make it clear to the municipalities that in this area this is one approach they may take.

Mr. Philip: So is the position of Mr. Kanter that municipalities and municipal councillors are too poorly informed or too stupid to understand that they have this power anyway and that, therefore, the provincial government has to put it in the statute, saying, "Even though you got the power then, we are going to give you the power that you already have"?

Mr. Kanter: It is Mr. Philip who is using rather insulting language with respect to municipal councillors, but I think during the course of this hearing we all found they were many parts of the current legislation that may not have been widely understood. There were many people who did not understand perhaps fully the ramifications of the current act.

Interjection: They understand it.

Mr. Kanter: I know we had discussions a number of times with people who had exercised the local option in their area and apparently done so in a very satisfactory way. I think it is helpful if people do have power to do certain things, to be as clear as possible that they have that power. In my view, this amendment will be helpful in clarifying a question that was raised on the operation of this bill.

Mr. Philip: With respect to Mr. Kanter, I am not the one who is insulting the council. I am using these words because this is the implication of his motion. He is saying, "Councillor, we're going to give you a bill that you are opposed to, we're going to give you powers that you never asked for, and on top of that we're going to put in the legislation powers that you

already have anyway, just to remind you that you've got them." If that is not a form of paternalistic Big Brotherism, I do not know what it is.

Interjection.

Mr. Philip: Or big sisterism, Ms. Collins.

Mr. Ballinger: Nice recovery, Ed.

Mr. Philip: I had some other questions of Mr. Kanter. My understanding is that you feel that somehow this is necessary as a reminder to the councils, even though they seem to use this power on their own anyway, that they really do have the power. Is that Mr. Kanter's position?

Mr. Ballinger: What was the question?

Mr. Philip: I would be happy to repeat the question.

Mr. Kanter: I cannot let the opportunity go by without a brief comment on the word "paternalism."

We have just heard some motions from Mr. Philip which would attempt to tie the hands of local governments in a most specific form. In fact, the whole approach of the opposition party on this issue from the beginning has been paternalistic in the extreme. The motions we heard today ordering a municipal government to publish notice of provisions affecting perhaps the opening of one drugstore, the enlargement of one single drugstore, ordering that to be done in 14 languages throughout Metropolitan Toronto is both paternalistic and impractical.

The approach of the NDP in general on this bill has been consistently paternalistic. Now to suggest it because we are trying to point out one additional option or possibility to members of local council strikes me as going beyond even Mr. Philip's usual inconsistencies.

Mr. Philip: With respect, if there was ever paternalism, it is the position of this government that says to the people out there: "Even though a majority of you are opposed to this legislation, you don't know what you are talking about. You're not real people; you're just a bunch of lobbyists."

If there was ever a paternalistic approach, it is the position of this government that says to the municipalities: "There are a lot of powers that you've asked for, but we are not going to give them to you. We don't think you are able to handle those powers, but we're going to give you other powers. We're going to give you powers to resolve problems which we are not prepared to deal with because we haven't got the guts to bring in proper legislation."

Mr. Ballinger: We never said that at all. You must have dreamed that last night.

Mr. Philip: If there was ever a form of paternalism, it is the paternalism that says, "You people have powers that you're exercising, but we're going to put in under section 4 a new amendment that says, 'You should remember that you may have these powers to exercise, because you just might not think of it.'"

I ask Mr. Kanter, since we have representations from the municipal councils, to find out whether or not he has really listened to any of them. I

do not think he has or he would not be going ahead with section 4, because they unanimously, with one or two exceptions, come out against this section 4, which he is imposing on them in a very paternalistic way. Can he name any municipality that has asked for this amendment which he is now introducing, this subsection 5 amendment?

Mr. Kanter: I am not sure if that is a rhetorical question or not. There certainly seemed to be a touch of rhetoric in the preface or the introduction of the question.

Our intent is to make it clear. There have been questions raised as to the extent of powers of municipalities under this legislation and we want to make it clear. Many, many people referred in the course of the discussions of this committee to the question of criteria and many people suggested they wanted criteria and many people suggested they wanted criteria at the provincial level. There is no question about that.

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We feel and we have suggested and I think we have indicated that criteria will be more effective at the local level and by this provision and also the publication of this plan, we feel this is the most appropriate response to those requests.

Mr. Hampton: I still have to ask a question of Mr. Kanter because I think he is trying to skirt the issue. Is it Mr. Kanter's position that municipal councils do not have the power now to set up criteria when they are determined to exercise a certain power? Is it his position that they do not already have that power to establish criteria?

Mr. Kanter: I have already answered that question. No, that is not my position.

Mr. Hampton: Then why have this section in the bill?

Mr. Kanter: I think I have explained the reasons for having the section in the bill. If the opposition feels strongly that this power should not be spelled out, it is free to vote against it. Perhaps it will be a little clearer this time in its position than it was in the last vote when there was some confusion perhaps on the part of the New Democratic Party as to how it was going to deal with this issue.

Mr. Philip: On a point of order, Mr. Chairman: There was no confusion. We had moved amendments to the last section. We moved amendments that might have given some substance to something that had very little substance to begin with. The Liberals, obviously, did not want to ensure that people who speak a language other than English or French be informed. They did not even want to go that far. I am sure their developer friends, the Cadillac Fairviews of this world, would not want these businessmen to know—

Mr. Ballinger: I object to that statement. They are no friends of ours at all.

The Vice-Chairman: Perhaps I could remind the committee that we are still dealing with Mr. Philip's amendment to Mr. Kanter's amendment.

Mr. Hampton: I have to respond to Mr. Kanter because really what this section is trying to do is to persuade the public out there that the

government is giving it something it asked for when in fact the government is not doing anything of the sort.

If I remember, so many of the councils and organizations, legitimate groups that Mr. Kanter calls unreal, came before this committee and said: "Look, we would definitely prefer provincial regulation of this matter. We would definitely prefer provincial criteria on this matter and that is how we would like to have it administered. But if the government is so hard-headed as to not listen to us, if the government is so hard-headed as to ignore our position, then the position we would prefer is that the government lay down criteria for the municipalities, that the government establish criteria that the municipalities must operate by so that we have some idea of what the ground rules are, so that when we go before a municipal council on a proposed bylaw we are not operating in some sort of vacuum."

That is what so many of the municipal organizations, individual municipal councils and business groups said to this committee. They said: "We would prefer provincial regulation of this issue. But if we can't have provincial legislation of this issue, what we want is for the province to say to the municipalities, 'You must establish some criteria under which these kinds of bylaws will be passed.' You must establish some criteria so that when we come up against a certain bylaw, we know the terms of reference within which we are dealing."

I just want to say something else about the paternalism. Is it totally unreasonable for the people of the province to expect the provincial government to regulate an area of economic enterprise or an area of business operation about which the municipalities themselves say: "We don't feel we have the tools to regulate this. We don't feel we have the enforcement tools. We don't want to be put in a position where every time we have a municipal council meeting, we are going to have a different business, a different section of the community or a different developer coming before us saying, 'We want special consideration.'" They do not want to be put in that position. They have said that time and time again.

I do not feel it is paternalism in any sense to say, and it is certainly the opposite of paternalism for the municipalities to be saying: "Look, this ought to stay with the provincial government. They are best able to deal with it. They have the tools to deal with it."

It is not paternalistic for the province to legislate in this area. It is not paternalistic for us to be echoing now what so many of those municipal councils and municipal associations said. If you are going to hand it down to the municipalities, for God's sake, lay down some criteria, put some guidelines in so that it is not a free-for-all.

Mr. Ballinger: They never said that.

The Vice-Chairman: Just ignore the interjections. They are out of order, as you know.

Mr. Hampton: They are out of order, but Mr. Ballinger does this all the time, so for his edification, I will deal with them.

In northwestern Ontario, we did have quite a few groups that came before the committee.

Mr. Ballinger: Municipal groups?

Mr. Hampton: Yes, and municipal councils.

Mr. Philip: That was when Mr. Ballinger was back in Uxbridge.

Mr. Chiarelli: I have just a few very brief comments. Throughout the course of this debate, in the House and in committee, there were significant accusations and implications made by people in the opposition that municipal councils really were irresponsible. They were going to be corrupted by the Cadillac Fairviews. They were going to sneak a bylaw through a council in the dead of night.

Mr. Hampton: Those are your words.

Mr. Philip: On a point of order, Madam Chairman: The member is imputing motives to the members of the opposition and in fact being untruthful in his comments about what they said. I ask that you ask him to withdraw his remarks.

It was not members of the opposition, be they Conservatives or New Democrats, who made those statements. If he had listened, and I know he does not listen very well—he is either a poor listener or a slow learner—he would have heard some councillors saying that certain municipalities would be under tremendous pressures by certain developers, perhaps for tax reasons, to implement an open-Sunday policy. It was they who were saying it, not members of the opposition.

The Vice-Chairman: Mr. Kanter, on the point of order.

Mr. Chiarelli: Can I just continue my comment?

The Vice-Chairman: We have not quite finished with the point of order yet.

Mr. Chiarelli: Can I comment on the point of order?

The Vice-Chairman: After Mr. Kanter, yes.

Mr. Chiarelli: Okay, thank you.

Mr. Kanter: My understanding was that a point of order ought to raise a point of parliamentary procedure. I do not believe Mr. Philip raised any such point. I would ask you to rule accordingly and to let Mr. Chiarelli continue with his comments.

Mr. Philip: On the point of order, I believe that—

The Vice-Chairman: Just a second. We have a speaking order on the point of order. Next is Mr. Chiarelli.

Mr. Chiarelli: On the point of order, I will say that I do not know whether Mr. Philip has read all the Hansard with respect to the debate that took place in the House on Sunday shopping, but I do have a very strong recollection of being in the House and making comments on some debate from certain persons in the opposition on this very point. I am prepared to let Hansard speak for itself, if we want to defer this question as to whether or not an apology is required. The comments were made with respect to almost the very points and the very language that I am using now, in the House and as recorded in Hansard. I am prepared to live by that.

Mr. Philip: If the honourable member has the Hansard, then let him produce it and make his point and allow the member he is accusing to respond to him. Without Hansard, it is simply hearsay and the member is imputing motives and statements to members. I submit I am not aware of those members making those statements.

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Mr. Chiarelli: First of all, I take it as an extreme compliment because every time I make what I think is a good debating point, there is either an interjection or a point of order raised by Mr. Philip. Once again, I take it as a compliment, but I am sorry Mrs. Cunningham is not here because she does roughly the same thing.

Mr. Philip: On that point of order: The only reason I do it is for the mental health reasons of Mr. Kanter. Every time Mr. Chiarelli makes a point, I notice Mr. Kanter go, "Oh," and turn quite red. I believe that unless there is some interjection then—

Mr. Ballinger: Not true.

Mr. Philip: —to act as a distraction, Mr. Kanter's blood pressure will increase dramatically. Since I happen personally to like Mr. Kanter and am interested in his physical wellbeing, I am simply trying to assist him.

Mr. Chiarelli: That simply throws out the window your accusation that we are a bunch of trained seals over here.

Mr. Philip: It simply takes away—

Mr. Chiarelli: You keep saying we are a bunch of trained seals over here and you just defeated your own argument.

Mr. Philip: No, I am just saying that—

The Vice-Chairman: Can I just rule on this point of order? Mr. Philip, you are out of order.

Mr. Chiarelli, I am prepared to rule on this point of order, which is in order, because there was an allegation that there was imputation of motives to a member. Unfortunately, I cannot rule right at the moment because I would like to review some of Hansard first. So I will reserve that decision.

Mr. Chiarelli: Can I give you some advice on whom the comments took place with?

The Vice-Chairman: Mr. Chiarelli, you were in full flight.

Mr. Chiarelli: Yes, I think. Perhaps I can continue my very brief remarks because I did premise my comments by saying they would be brief. Unfortunately, they became a lot lengthier than I had anticipated.

I do want to say there have been implications from various sources, I believe, and I will be cautious on how I say that, that perhaps some councils would not act responsibly with respect to the local option, the municipal option and retail business holidays. I do not share that.

I think our elected councillors in Ontario are very responsible. They will deal with this legislation very responsibly and I do not think, particularly in the case of small municipalities, they should be forced to establish a plan when perhaps they have to deal with this issue in a very small and cursory way and perhaps not have to deal with it at all, if they accept the provincial framework.

I think it is important to keep in mind that there is a provincial framework, that councils can have the option simply to follow and do absolutely nothing. I do not think we should force them to establish a plan if they are going to adopt the provincial framework.

Again, I think there has been a lot of confusion with respect to this legislation which has been caused from many different sources. If we can do anything to clarify how this legislation will work or how it can work, then we are doing a service to the province.

Ms. Collins: I do not think it is correct to look at subsection 5 in isolation. I think you have to look at subsections 5 and 6 together. The reason subsection 5 is there is to point out that municipalities may very well pass these plans with criteria setting out what they want in their municipality.

We have to state that in the legislation so that we can say that if a council does have a plan, it should be public. I do not think you can look at one without looking at the other. The public process is part of what this government has tried to achieve in a number of sections of the act.

Mr. Philip: In keeping with Ms. Collins's amendments that we in the opposition always listen very closely to, I believe my colleague has an amendment to my amendment.

Mr. Hampton: Since Ms. Collins has brought up that subsections 5 and 6 should be considered together, I would move an amendment.

The Vice-Chairman: Mr. Hampton moves that Mr. Philip's amendment be amended further by adding the following clause:

"The council shall establish a plan setting out the criteria to be considered by it in determining whether a bylaw should be passed under subsection (1) and the council shall ensure that the plan is made available to the public by publishing it in a newspaper having general circulation in the municipality."

Mr. Hampton: They do, in fact, then read together.

Mr. Ballinger: Except the operative word is "shall" instead of "may."

Ms. Collins: We are saying they should have the option.

Mr. Ballinger: That is right.

The Vice-Chairman: Mr. Hampton, do you wish to speak to your motion?

Mr. Hampton: If the government is saying the two should be read together here, then how does the government reason that in subsection 4(5), "the council may," that the council has discretion, but in subsection 4(6) the

council does not have discretion? Can the council be trusted on one and not trusted on the other? Is that what the government is saying? You should get it straight. We are saying the straight way is to say, "You shall do both." If you shall do both, then it is absolutely true that there are criteria and it is absolutely true that the criteria will be published in a newspaper.

When the government says the two should hang together, but that the council should have discretion on one and not have discretion on the other, it flies in the face of arguments the government caucus is trying to make. The argument that the government caucus is trying to make, as I have heard Mr. Chiarelli say and as I have heard Mr. Kanter say, is that the councils are completely responsible, that there is no need to say "shall" anywhere. How you can say that and then insist on a "shall" in the second place, we do not understand.

If you are going to put "shall" in the second place and if the two are going to hang together, then our argument is that the way to do it is to say, "The council shall establish a plan setting out the criteria to be considered in determining whether a bylaw should be passed under subsection (1) and the council shall ensure that the plan is made available to the public by publishing it in a newspaper having general circulation in the municipality." Then you are very clear.

Ms. Collins: I think the point we are trying to make is that not every council may want to open on a Sunday. Many of them may remain closed. Why would they need a plan if they were totally closed on a Sunday? We are saying they have that option. We are aware of the fact that they have the option to develop a plan for their municipality if they should consider opening on a Sunday: drugstores over 7,500 square feet or whatever they like. If they do develop a plan, then it should be made public. I think the members opposite do understand the point. I just do not think they want to support it.

Mr. Philip: May I ask a question of Ms. Collins on that?

Ms. Collins: You "shall" ask a question.

Mr. Philip: If I "may" ask a question, because I "shall" ask one anyway, why would a council want to pass a bylaw if the municipality is already closed now? There would be no need for a bylaw.

Ms. Collins: Mr. Philip, why would you be opposed to a public hearing process? I do not understand your rationale. You opposed it earlier and now you are opposing it again. The council may have a plan. You do not even want to make it public.

Mr. Philip: I am sorry. What we are trying to do is to have a public plan. We even propose that MPPs like yourself be involved in those public hearings. You were obviously afraid of such a plan because you wanted to pass the buck. You want paternalistically to pass your responsibility to the municipalities. You do not want to set up criteria whereby they can pass them even though they have asked for those criteria. Indeed, now that you have an opportunity to say there should be at least a plan if they are going to change it, you are refusing to do it. You want to give them powers they already have.

If there were ever anything absurd, it is this. Subsections 4(5) and 4(6) do not go together the way you have it. In subsection 4(6), you are saying the municipalities cannot handle things themselves, that you have to dictate to them, and in subsection 4(5), you are saying, "We're going to give

you powers that you have anyway." If there were ever a paternalistic, silly piece of legislation, it is this. It is no wonder the municipalities are laughing at you and saying, "This is an absurd piece of legislation that contradicts itself."

Madam Chairman, I see it is six o'clock. My colleague has a number of other amendments to my amendment. I move adjournment of the committee at this time until we next sit to deal with our amendments.

The Vice-Chairman: The committee is now adjourned.

The committee adjourned at 6 p.m.

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J-39

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Tuesday, October 18, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Ms. Poole

Collins, Shirley (Wentworth East L) for Mr. Keyes

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Pelissero, Harry E. (Lincoln L) for Ms. Hart

Runciman, Robert W. (Leeds-Grenville PC) for Mr. Cureatz

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, October 18, 1988

The committee met at 3:55 p.m. in room 228.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 4:

Mr. Chairman: I recognize a quorum. We are dealing with Mr. Philip's amendment. Mr. Philip, I was not here, but I understand you spoke extensively to the amendment. Is that fair?

Mr. Philip: Would you mind repeating the amendment, since I have a number of amendments and I want to make sure it is the right one I am speaking to?

Mr. Chairman: Mr. Philip moves that subsection 4(5) as set out in the government motion be amended by striking out the word "may" in the first line and substituting the word "shall" therefor.

Okay. Do any other members wish to speak to this amendment to Mr. Kanter's amendment? Seeing none, we are ready to vote. Those in favour of Mr. Philip's amendment?

Mr. Philip: Recorded vote.

The committee divided on Mr. Philip's amendment, which was negatived on the following vote:

Ayes

Philip, Runciman.

Nays

Collins, Kanter, Pelissero, Sola.

Ayes 2; nays 4.

Mr. Chairman: We are now dealing with Mr. Kanter's amendment, which is before you and has been read. Is there any further discussion by members on Mr. Kanter's amendment?

Mr. Philip: I would certainly like to hear from Mr. Runciman, since I know he has done a variety of work on it and has not had an opportunity to look at it yet.

Mr. Chairman: He is not choosing to speak.

Mr. Runciman: I appreciate the opportunity. I really have not been privy to the earlier discussions so I guess I have some difficulty in speaking to the amendment. Just at a brief glance, I am having difficulty in understanding the rationale behind it, in looking at the bill. Obviously, I would assume that any responsible municipal council would be establishing some sort of guideline or plan, however we wish to describe it, to deal with this issue, if indeed the bill passes and becomes law.

From a personal point of view—I know this is probably going to be redundant since the committee has already discussed this yesterday apparently—I guess before I would offer further comment on it, I would like to hear briefly, if possible, from the parliamentary assistant in respect to the rationale behind this amendment.

Mr. Chairman: As a matter of fairness to Mr. Runciman, who was not here, perhaps you would do it briefly.

Mr. Kanter: I have no problem with that, Mr. Runciman. Do you have a copy of the amendment?

Mr. Runciman: Yes, I do.

Mr. Kanter: Okay. I do not think we have to read it again. The purpose of the amendment is to make it very clear that municipal councils may establish a plan with criteria. The criteria may include tourism, multiculturalism, labour patterns, location; any one of a variety of criteria that municipalities have in fact employed in the past. This plan is to be published in a newspaper to make all residents of the area, employers and employee groups familiar with that particular plan.

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Such a plan might be considered in a very general way analogous to an official plan that acts as a sort of general guidepost against which individual applications are to be decided. It could serve as some guidance. It could encourage local municipal councillors to look at Sunday openings in a coherent way. Indeed, it could have them look at Sunday openings in conjunction with openings on other days of week, which they now control, in a coherent, consistent sort of way. We feel it would be a useful addition to the powers that municipalities have under the other parts of section 4.

Mr. Runciman: I guess that generates a few more questions in respect to Mr. Kanter equating the development of this kind of a plan with an official plan. It is my understanding that the municipalities are required to adopt an official plan. I guess this follows along with the proposal from Mr. Philip in respect to amending the wording to read "shall" rather than "may." I am wondering, since Mr. Kanter has drawn the analogy with an official plan, why the government feels that if indeed it is going to serve that kind of role or purpose, it is not inclined to make it mandatory.

Mr. Kanter: As Mr. Runciman points out, that was in fact the subject of Mr. Philip's motion which was just defeated.

Mr. Chairman: I do not want to interfere with either one of you gentlemen, but we really have dealt with that. I know that is a bit unfair to Mr. Runciman. Maybe we should have done this before we voted on Mr. Philip's amendment, but in fact it has been voted on and I think really, at this point, it is redundant. You can ask any more questions you like, Mr. Runciman.

Mr. Runciman: In respect to—

Mr. Chairman: In respect to the amendment itself, if you like.

Mr. Runciman: I guess I would interpret the question I just posed as being directed towards Mr. Kanter's amendment, the wording of "may establish," and really in response to the comments he made in respect to drawing an analogy between this proposal and the municipality's official plan.

Mr. Kanter: I have no difficulty in responding further, although the specific amendment on this point was considered and voted on and defeated prior to the question.

I think there is an essential difference, and that is that there is, in essence, a provincial plan. There is a provincial framework. The provincial framework is closed. It is only in the event that a municipality wishes to deviate from that provincial plan that it may want to establish a plan of its own, but there already is a framework in place. If the municipality does nothing, the municipality remains closed, according to section 2 of the bill, and I think in either the act or the bill, the operative provision of the bill is that stores shall remain closed.

We are setting forth a very clear framework for all municipalities and it is only in the event they want to deviate from that that they may establish a plan.

It is a little different from the official plan situation where the municipality has flexibility. It is a blank sheet in terms of what they want to put into their official plan. In this case, the province is establishing a plan. The plan is closed.

Mr. Chairman: Any further questions by members, or are we ready?

Mr. Philip: I believe we are not allowed to have an amendment to an amendment, but I believe it would be in order for me to move an amendment now, would it not?

Mr. Chairman: Yes, it is.

Mr. Philip: Maybe counsel can help me with the wording of it.

Mr. Chairman: Mr. Philip moves that "No plan or amendment may be passed until 30 days after the plan is made available to the public by publishing in a newspaper having general circulation within the municipality."

Which section are you amending?

Mr. Ballinger: You have the most vivid imagination of anybody I know.

Mr. Chairman: Which section?

Mr. Philip: Subsection 6.

Mr. Chairman: Would you care to, with the assistance of legislative counsel, write that up? Perhaps we could deal with subsection 5 while Mr. Philip is putting his thoughts together on paper. Are you content with that? Is there any further discussion on subsection 5, which is Mr. Kanter's amendment? No further questions; all right. Are we ready to vote on 5 at least?

Mr. Philip: May I ask a question? Mr. Runciman was not here for the discussion on this earlier. I think the point that opposition members made is that there seems to be a tremendous contrast between what Mr. Kanter calls our attempt to be paternalistic and put the word "shall" instead of "may" in subsection 5 and the use of "shall," that paternalistic word, in subsection 6.

Mr. Chairman: We have dealt with that. I will let Mr. Runciman ask the question because, in fairness, he was not here.

Mr. Philip: I believe that is the kind of issue that Mr. Runciman would want to have clarified for him before he votes on this.

Mr. Chairman: I think he asked the question.

Mr. Philip: I can see him nodding his head. I think he wants to ask that question of Mr. Kanter before he decides how he will vote.

Mrs. Cunningham: I did not hear it either.

Mr. Runciman: Perhaps Mr. Kanter has no difficulty in responding to that.

Mrs. Cunningham: Could you make it succinct?

Mr. Kanter: I am sorry. The question, it seemed to me, of the "mandatory versus directive" is something that we went into at some length yesterday. I appreciate that Mr. Runciman was not here.

The reason we are suggesting it is that it is permissive. I have mentioned one of the points, the fact that the province has established a provincial framework of closing on Sunday. It is only in the event that a municipal council wants to derogate from that that we are putting in some procedural suggestions. Certainly the hearing is to be compulsory.

I guess it is subsection 1a that we added yesterday that there must be a public meeting and there must be notice of that public meeting, something which is in addition, I might point out, to the provisions in the current Retail Business Holidays Act under which about 125 to 130 municipalities have established tourism exemptions, some of them perhaps with this public notice and hearing procedure, some of them without. So these are all provisions in addition to what exists under the current Retail Business Holidays Act.

Philosophically, it is our view that municipalities may want to look at this subject in a holistic way, particularly the larger ones. It is possible that one municipality might take the lead in establishing a plan and other municipalities of similar size or similar situations might adopt it. Perhaps the Association of Municipalities of Ontario or some group might write a model Sunday shopping plan that might be adapted by various municipalities.

It is not something, we feel, that would be appropriate to make compulsory for a number of reasons. There are many small municipalities that do not have a lot of professional staff. On the analogy of the Planning Act for a number of years, official plans were optional. I do not know. They may have been made compulsory now.

I know they were optional for many years under the previous government, even with respect to regional plans. I understand all municipalities are supposed to have official plans within five years, I believe, after their

inception. Some of them do not even at this point. It is our view that a Sunday shopping plan is another option that a municipality may adopt. It is not necessary that the municipality do anything. The municipality need not take any action; and if it does not take any action, it is closed.

In the event that a municipality wishes to open, it has to follow certain notice and hearing provisions—it has to because of the amendments that were adopted by this committee yesterday—and it may, on a permissive basis, establish a plan for further guidance for members of that council and the public in that municipality. If it does establish such a plan, it must be published in a newspaper; it must be a public document which the residents of that municipality are generally familiar with.

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Mrs. Cunningham: I would like to ask Mr. Kanter something because of the remarks he just made, a couple of which have continually caused me some concern, and I would like to be able to go out and give the justification for this to the public, if I can. He stated in his opening remarks that the province had established a framework to open or to close. He has said this a number of times and, with regard to this section, trying to describe it, I do not see where the framework says that closing is more important than opening. I wondered if he could give me some ammunition to use as I try to support that statement.

Mr. Kanter: Section 2 of the bill.

Mrs. Cunningham: Section 2 of the bill is somewhat weaker than the old section 2. It has taken out the onus on the person carrying on the business for prohibition and now just has the onus on employees for prohibition. So it is a weaker section 2 than under the present Retail Business Holidays Act.

I do notice in section 4, which is new in the bill, that it says, "Despite sections 2 and 3, the council of a municipality may by bylaw permit retail business establishments to be open on any holiday"—and you have got "open" first—"or may require that retail business establishments be closed on any holiday." I am just objecting to your saying that the framework really does support the closing. So give me some more ammunition, because you have even got "open" before you have got "closed" in the new section 4. Go ahead.

Mr. Kanter: I believe that Mrs. Cunningham may not understand section 2 of the bill in conjunction with the provisions of the Retail Business Holidays Act that will remain. I would like to read, for her benefit and the benefit of the committee, what section 2 of the amended legislation will say.

Mr. Chairman: We are really dealing at the moment with subsections 4(5) and (6). We are going to get to 2. We have not even—

Mrs. Cunningham: But the rationale for subsection 4(5)—

Mr. Chairman: Subsections 5 and 6? All right.

Mrs. Cunningham: One of the rationales that Mr. Kanter put forth that I am trying to understand is that this provincial framework supports the closing of additional retail establishments on Sundays, and now he is trying to prove that that statement in support of this section is in fact a reality. I am very interested in this.

Mr. Chairman: If you can relate it to subsections 5 and 6.

Mr. Kanter: I would like to answer Mrs. Cunningham. I also think that legal counsel might have an opportunity to comment on her comments as to whether the existing provision in section 2 is stronger or weaker.

What I would like to say in a preliminary way relates simply to what the wording will be. The prohibition in section 2 will state: "No person carrying on a retail business"—"carrying on," that is, the employer, the shop owner—"in a retail business establishment shall, (a) sell or offer for sale any goods or services therein by retail; or (b) admit members of the public thereto, on a holiday."

In addition, the existing provision, subsection 2(2) in the Retail Business Holidays Act, will remain in the new bill. That provision will read: "No person employed by or acting on behalf of a person carrying on a retail business establishment shall, (a) sell or offer for sale any goods or services therein by retail; or (b) admit members of the public thereto, on a holiday." I would point out that "holiday" includes Sunday.

Perhaps to further clarify, I would like to call on legal counsel to explain why the wording of the prohibition section was amended in a small way.

Mr. Chairman: Mr. Spring, would you like to come forward to a microphone.

Mr. Spring: The argument had been made that on a true construction of the act, as presently drafted, the operator of a retail business establishment had to fail to ensure both that the public was admitted to the establishment and that no goods or services were sold or offered for sale therein by a retailer on a holiday before he could be accused of committing an offence; whereas a person acting on his behalf, an employee, could have committed an offence if he failed to ensure that either one of those duties was carried out, either that the members of the public were not admitted or that goods or services were sold or offered for sale.

The amendment will place the employer in the same shoes as the employee by ensuring that the employer can be charged when either one of those duties is breached in a similar manner to the way that the employee may be charged.

Mrs. Cunningham: Can I just ask a question? Are you stating that we do not need to add to that section in order to give it the same kind of clout, "every person employed by or acting on behalf of"? Is this inclusive, as it is written, in your legal opinion?

Mr. Spring: I am sorry, Mrs. Cunningham, I do not understand your question.

Mrs. Cunningham: Okay. The present legislation describes the responsibilities for both the person carrying on the business and the persons who are employees.

Mr. Spring: Yes.

Mrs. Cunningham: Okay. This new legislation just talks about the person carrying on the business. My question is, why did you feel it necessary to exclude the employees or a person acting on behalf?

Mr. Chairman: That is still in force. Remember that this is an amendment to the existing act.

Mrs. Cunningham: To subsection 2(1).

Mr. Chairman: No. We are dealing with an amendment to an existing act—

Mrs. Cunningham: Okay.

Mr. Chairman: —so, in fact, what happens is that the item that was read out by Mr. Spring with reference to an employee is still in place.

Mr. Spring: Section 2 substitutes as 1.

Mr. Chairman: The only part that is being amended is subsection 1, so 2 stays in place. You may be confused because we kept talking about this as a new act. It is not a new act. It is an act to amend the Retail Business Holidays Act.

Mrs. Cunningham: I am not normally confused, but I admit that I might be at this moment. Can you leave it with me just a moment till I can get my head around that?

Mr. Chairman: While you are doing that, maybe we will have Mr. Philip's amendment read into the record.

Mr. Philip: Would you like me to read it in, Mr. Chairman?

Mr. Chairman: No. I will do it, Mr. Philip.

Interjections.

Mr. Chairman: It has to be read into the record.

Mr. Philip moves that subsection 4(6) of the act, as set out in the government motion, be amended by adding thereto the following: "and no such plan or amendment to the plan is valid until 30 days after the date the plan or amendment is published."

Do you wish to speak to that, Mr. Philip?

Mr. Philip: This is just in keeping with the rest of the bill, or at least some of the more enlightened parts of the bill, namely, the amendment that I moved and that, lo and behold, Mr. Kanter accepted earlier, which was that the public should be given 30 days' notice when any amendments are being made to the bylaws. It seems reasonable that if a plan is being developed or tabled, there should be reasonable time for comment by any of the parties who are interested.

It is quite consistent, interestingly enough, with the report turned out by the committee headed by the member for High Park-Swansea (Mr. Fleet) on regulations, which suggests that there should be notice and comment when regulations are being drafted or have been drafted by provincial governments, bureaucrats, and as regulations to bills. This is consistent both with the earlier changes to this bill and with a major and important report turned out by the standing committee on regulations and private bills, a report which no doubt the government will want to adopt fairly soon.

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Mr. Chairman: Are there any further comments on Mr. Philip's motion?

Mr. Philip: If the members of the committee would give me a little bit of time, I could get a copy of that excellent report by the regulations committee and read you the relevant sections.

Mr. Chairman: I think we will try to deal with what is before us.

Mr. Philip: I would not want them to just take my word for it.

Mr. Kanter: I have a question, Mr. Philip. I do not see the point that would be achieved by this amendment. We have said that a council may establish a plan and that if a council adopts a plan, it shall ensure it is available to the public by publishing it. Presumably, if a council wanted to adopt such a plan, it would be available to the public and it would guide potential applicants and members of the public as to what might be considered by that council.

In terms of the validity of the plan, surely it is the discussion of the plan and the fact that the plan is published and made a public document, made available to the public, that gives it validity. I just do not understand, and perhaps Mr. Philip can enlighten us, how the mere passage of time of 30 days would somehow affect the validity of the plan should a municipality want to pass one.

Mr. Philip: The mere passage of time will allow members who have an interest in the plan to comment and to have an influence on the changing of that plan if it is inappropriate, in the public view, to that community, or if there are ways of improving it.

Mr. Chairman: Before you continue, I had not noticed this, but your motion, Mr. Philip, refers to "plan or amendment to the plan." Then it says, "after the date the plan or amendment is published." There is nothing in subsections 5 or 6 that refers to the amendment of a plan.

Mr. Philip: Amendment to a plan is simply a change to a plan.

Mr. Chairman: I appreciate that, but there is nothing in there to refer to an amendment of a plan.

Mr. Philip: No, but it refers to the plan then. If you are going to change the plan, it is perfectly consistent to give an announcement the same way as if you are announcing a plan for the first time.

Mr. Chairman: I quite appreciate that, but subsection 6, if it is passed, talks about the publication in a newspaper of the plan. There is no requirement nor is there any authority that there be publication of an amendment to a plan. There is nothing in the bill to refer to amendments to plans.

Mr. Philip: So you are saying that if a plan is being changed, that is not the establishment of a plan?

Mr. Chairman: No, all I am saying is that your amendment does more than simply amend the section. It goes beyond that. It actually adds something.

Mr. Philip: We can make it subsection 7 then, that no such plan is valid until 30 days after the date of the plan is published and no amendment may be made to a plan unless that amendment is published in a newspaper having general circulation in the municipality and no amendment may be made to that plan until 30 days after the date that amendment is published. If you would rather I go in that direction, I would be happy to do that.

Mr. Chairman: All right. Despite my concerns, the legislative counsel advises me that your motion is in order.

Mr. Philip: May I ask legislative counsel a question? In keeping with the chairman's concerns, would it not make some sense to separate them that way, so that I would have two amendments rather than simply the one amendment?

Mr. Chairman: I would advise that we will deal with the amendment.

Mr. Philip: I asked the question to counsel. I recognize that you have practised at the bar on numerous occasions but you are not a legislative draftsman, so I have asked counsel.

Ms. Mifsud: I am not sure of the question.

Mr. Chairman: He wants to know if he could have two amendments rather than one. I think that is the gist of it.

Ms. Mifsud: I can certainly draft you two alternative amendments that would achieve your purpose. Whether they are in order or not would be, I think, for the clerk to state.

Mr. Philip: Perhaps we could have a five-minute recess while we draft those then, because I am aware of the sensitivity of the chairman. He wants this to read properly, so I would be quite prepared then to have this drafted as two amendments or amendments to two sections.

Mr. Chairman: You go ahead and draft them. We are going to come back to Mrs. Cunningham because we had reverted to you. Mrs. Cunningham was having some concern. You go ahead and draft those while we are dealing with Mrs. Cunningham.

Mrs. Cunningham: Again, I am going back to looking at the justification for saying that the framework in fact is stronger on the closing side than on the opening side. Since we are on this section 2, we may need the legal counsel up here again—I am obviously challenging his mind—to explain to me why they dropped the old subsection 2(1) and put the employer in the old subsection 2(2).

Mr. Chairman: Because the word "and" I think was used, as I recall him saying. The word "and" was used in the original one. Now they have changed it to "or" so it reads the same way.

Mrs. Cunningham: No, they have changed it to—

Mr. Chairman: I hope those bells are for a quorum. We will find out in just a second. Quorum, okay. We can continue then. Is that right? I am sorry Mrs. Cunningham. Go ahead. Maybe you would like to have Mr. Spring come back up. I should not have interrupted. Mr. Spring, do you want to come up and explain to Mrs. Cunningham why they dropped the original subsection 2(1)?

Mr. Philip: I think you should wait until you have a quorum and explain it on the record.

Mr. Runciman: I am not sure whether under the rules—the clerk could perhaps advise us—once the bells ring we are not obligated to—

Clerk of the Committee: When there is a division called—

Mr. Runciman: It is academic, but it might be good to note for the future.

Mr. Chairman: I think it is when it is a quorum bell that we are entitled to continue the sitting.

Clerk of the Committee: If it is a division bell, the committee is obligated to attend. If it is a quorum bell, you are not obligated.

Mr. Chairman: Mr. Spring, I wonder if you could address Mrs. Cunningham's question about why the original subsection 2(1) was being replaced by the amended subsection 2(1).

Mr. Spring: Let me start in an indirect manner. You should note first that subsection 2(2) still remains in the legislation, so that there is still an offence. The fact is that there are two offences that may be committed by a person employed by or acting on behalf of the person carrying on a retail business. There are still two employee offences.

The purpose of the amendment to subsection 2(1) is to ensure that there are, in fact, two offences that may be committed by the operator or the employer as well. At least one court has held that on a true construction of subsection 2(1), as presently drafted, an employer is in the happy position of not committing an offence until he has failed to ensure both that no member of the public is admitted thereto and that no goods or services are sold or offered for sale therein by retail on a holiday, whereas his employee would be guilty of an offence if he failed to ensure that either one of those things had occurred.

The purpose of the amendment is to create equity in so far as it ensures that an employee is not in a worse position than an employer vis-à-vis whatever delict that employee must commit in order that it be established that he had committed an offence. It is parallel structure, if I can put it that way. The amendment ensures that the employee and the employer each commit the same offence by committing the same act or omission.

1630

Mrs. Cunningham: Even though the employee is not referred to, as he is in the present legislation?

Mr. Spring: In fact, they are. The only thing that is being amended, Mrs. Cunningham, is subsection 2(1). Subsection 2(2) remains untouched. It stays in the legislation as currently drafted. There is no need to refer to it, in other words.

Mrs. Cunningham: Okay.

Mr. Chairman: Is it not, in the short of it, that the one being replaced was conjunctive, whereas the second part was disjunctive?

Mr. Spring: You have put it considerably more succinctly than I have, Mr. Chairman; that is true. It clears up the effect, and the effect now is that an employer will commit an offence in the same manner as an employee could previously have committed an offence.

Mrs. Cunningham: Could we go back, at my normal, preprimer level of thinking, and look at page 2? Do you have this one?

Mr. Spring: Yes, I have.

Mrs. Cunningham: Therefore, subsection 2(1) as it is written in the old act is gone. Correct?

Mr. Spring: That is correct.

Mrs. Cunningham: Subsection 2(2) in the old act has been changed and instead of saying—wait a minute. No, it is the same.

Mr. Spring: Subsection 2(2) remains exactly the same. That is true.

Mrs. Cunningham: It remains the same. Okay, then I go back to my original point. I think you have tried to respond to that. I just want to make sure I understand it. The old 2(1) is gone.

Mr. Spring: That is correct.

Mrs. Cunningham: It referred to—I was not correct. I have to back up a bit. The old 2(2), which is now 2(1), has been changed. You said it had not.

Mr. Spring: No. Subsection 2(2) of the current legislation remains unchanged. There is no change to it in Bill 113.

Mrs. Cunningham: It stays in.

Mr. Spring: It stays in the red book, right.

Mrs. Cunningham: Okay, so the "employed by" part is still part of the act.

Mr. Spring: Yes, it is.

Mrs. Cunningham: So 2(1) is this one, which really says the same thing except it is set out in the same format as 2(2).

Mr. Spring: Precisely.

Mrs. Cunningham: I thank you for your clarification. My political question will not, of course, be aimed at the solicitor, but at Mr. Kanter when he returns. That still does not help me as far as its being, quite frankly, a piece of legislation with regard to section 2 which he refers to: It is no different, really. It is just stating the same thing, but it is set out differently, and I do not see why it is stronger.

Mr. Chairman: No. Can I explain? I probably should not, as chairman, but if you look at the present 2(1), for a person carrying on a retail business to be convicted under the present section, which is being amended by the act, there would have to be two things proven. The first one would be that

he had admitted a person to the premises, and that he had sold goods. It is "and," not "or."

If you look at the second part under the present act, it talks about "sell or offer for sale any goods or services therein by retail; or." It creates two offences. So you do not have to prove both things. That is the reason for the amendment to subsection 2(1). It is to do the same thing, to make it disjunctive as opposed to conjunctive.

Mrs. Cunningham: Okay.

Mr. Chairman: That is the only purpose. In fact, the amendment to that act, as near as I can figure it, has absolutely no political purpose whatsoever. All it is doing is clearing up and putting on an even keel the prosecution of an employer.

Mrs. Cunningham: An employee and an employer.

Mr. Chairman: That is right. That is all it has done.

Mrs. Cunningham: Okay. Given that statement that you concur with the solicitor—

Mr. Chairman: I am not supposed to give those types of opinions.

Mrs. Cunningham: That is fine, but the point I am making is, how does this make it stronger in support of the framework Mr. Kanter was talking about, which was that the framework states in a stronger way that stores will be closed on Sunday as opposed to open? The solicitor has just confirmed my concern; that is, it really does not strengthen that argument at all. It is more to do with prosecutions and making things, as you say—well, I will not use your technical language, but it does not support the point Mr. Kanter was making in speaking to this section 5 at all. It really is no different at all when it comes to either encouraging or discouraging someone to open or close on Sundays. There is no difference.

Mr. Chairman: I will not answer that one, obviously. Mr. Kanter can answer that one.

Mrs. Cunningham: Do not say a thing. You are supposed to be the impartial chairman. Although, I mean, it is already stated in Hansard that I am quite correct on that.

Mr. Chairman: Okay.

Mrs. Cunningham: That was the first section he referred to in support of this close-on-Sunday bit and there is no substance to it at all. I was just making that point as he spoke of section 5. He is not here, so I will not go on with my argument.

Mr. Chairman: We are jumping back and forth here, but we really were on Mr. Philip's motion, the amendment, which I understand we now have before us.

Mr. Philip: We have it redrafted, so it will be in order for you. I believe it is being photocopied.

Mr. Chairman: It is being copied; all right. Maybe Mrs. Cunningham

could address Mr. Kanter with that point again, and we will get an answer, hopefully. Do you want to ask Mr. Kanter?

Mrs. Cunningham: Yes. I have been advised in support of your statement, which was that the framework of this legislation is very strongly in support of closing stores on Sunday rather than opening them. You say that is your framework. But section 2, as you described in support of your argument, really is not any different from the old act at all, except in the essence that an employer and an employee are equally responsible for being charged in relationship to selling or offering or admitting members of the public. It has nothing to do with supporting, as you state, that the framework of this legislation is that stores shall remain closed on Sundays. That is not a good argument.

I wonder if you would like to give me one that I can use in support of your statement. Where, in this bill, shall I tell the public that the framework in fact closes doors on Sunday more than the existing legislation? You gave me section 2; it will not work. We have had a legal opinion. Even the chair strayed a little bit, I must admit. So that is shot down. Do you have another one I can use?

Mr. Ballinger: Yes; trust us. We are with the government.

Mr. Kanter: When I left the room, I thought we were on my amendment to section 4 about plans and criteria and publishing and stuff like that. Did I miss something and are we now on section 2?

Mr. Chairman: No. We were on that and then Mr. Philip raised an amendment. Because he was writing it out, we went back to Mrs. Cunningham who was trying to understand why the amendment was there. Then she related it back to you, I think making a comment that it was a reason for the strengthening of the bill in terms of closing. Does that help you?

Mr. Philip: I think, in fairness to Mr. Kanter, that Mrs. Cunningham should repeat her question over again so that he will understand the context in which she is putting it.

Mr. Kanter: I would appreciate that. I also have some information I would like to distribute to all members of the committee, which is a document that integrates the proposed amendments with the existing Retail Business Holidays Act, which may help all members of the committee to understand how the total package will look. I have just asked the clerk to distribute something that might provide some assistance.

Perhaps she can reask her question. I will attempt to answer it if I can.

Mr. Chairman: Say again what you were saying. Reask the question.

Mrs. Cunningham: Actually, it was a statement, and then I wanted my observations with regard to the old and the new section 2 clarified, because quite frankly, I am trying to find a way to support the observation you made in speaking to section 5.

Your opening statement said something like, "The province has established as part of its framework for Bill 113 the fact that stores shall remain closed on Sundays if the municipality chooses to do so," or whatever. They also, in my opinion, can open on Sundays equally, in fact, more so—I will just interject—if the domino effect takes place, which we know it will. All I am looking for is some argument to support your statement.

You used section 2 to be supportive of the statement you just made, in that the framework closes stores. In fact, section 2 does not do one thing to support that framework, according to the response I got in questioning the solicitor. So I would like you to take your statement back or give me more ammunition to use with regard to this statement you made about the framework of the legislation closing stores on Sunday. I cannot find where it does that.

1640

Mr. Kanter: I am going to respond briefly to Mrs. Cunningham. First, I am not sure it is my role to provide ammunition to Mrs. Cunningham in terms of a bill that she likes or feels comfortable with. I think Mrs. Cunningham is an experienced politician and can provide her own ammunition in that regard.

Mrs. Cunningham: Smile, Bob.

Interjection: You might take offence at that.

Mrs. Cunningham: That crack.

Mr. Chairman: Let's get on with the ammunition.

Mr. Kanter: I hesitate to provide ammunition for Mrs. Cunningham. I think she is quite capable of fashioning her own.

I did mention that the section which is permissive instead of mandatory is permissive because there is a provincial framework in section 2 that requires stores to be closed. There was some discussion with legal counsel, as I understand it, why that section is at least as strong in the proposed amendment as in the current bill. I believe it might be a touch stronger. I cannot add anything further to that explanation.

Mrs. Cunningham: Could I respond, please? I do not want to mislead Mr. Kanter.

Mr. Chairman: All right.

Mrs. Cunningham: First of all, I am not trying to find any support for the statement you made. If I wanted to talk about closing stores on Sundays, I would go back to old legislation and the definition of "tourism." Okay? That is what I would do.

But you are saying that within this provincial framework, in section 2, you have some strength there that requires stores to be closed on Sundays. I am saying it is no different from the existing legislation, the Retail Business Holidays act. If that is all you have to support this statement about the framework requiring stores to be closed on Sundays, you had better not use it again, because it does not do one thing to support your statement.

What I would like, if you can find it anywhere in this new bill, is some ammunition, some evidence that I can use in support of your statement. I am trying to be helpful. I cannot find it. What I am saying is, do not give me section 2, because it is no different from the old section. It has nothing to do with any provincial framework. You used to say the provincial framework supported a common pause day. That is what you said during week one. You dropped it after the first week.

Mr. Chairman: Let's not get too far afield here.

Mrs. Cunningham: No. I am giving Mr. Kanter an opportunity. I have people asking me where it says the stores are going to be closed on Sundays as part of this provincial framework, as stated by Mr. Kanter. I am asking him to give me some evidence of that. He did. He gave me section 2. The solicitor said it does not support the closing or opening any more than the previous one; I agree with him. You sort of strayed, Mr. Chairman, and said the same thing, but we will not hold it against you.

Mr. Kanter, can you give me another section, anything, in this Bill 113 to support the statement you made?

Mr. Kanter: I have answered the questions. I cannot answer any further.

Mrs. Cunningham: So you cannot.

Mr. Chairman: Okay. I think you got either your answer or whatever—

Mrs. Cunningham: I think you should think about it and bring it back to another committee. I am desperate for some support.

Mr. Chairman: Okay. We are back to Mr. Philip's amendment, which I will read.

Mr. Hampton: Point of order, Mr. Chairman: Just continuing on—

Mr. Chairman: Continuing on with what?

Mr. Hampton: With what the question is.

Mr. Chairman: Mr. Hampton, you were not here, but what we had done—

Mrs. Cunningham: He could have been here four weeks ago and heard the same stuff. It does not matter.

Mr. Chairman: Just a second. Your colleague, Mr. Philip, had brought forth another amendment. We were dealing with that, and the reason we did not continue to deal with it and got back to Mrs. Cunningham was that he did not have it written out or reproduced. We are now going back to his amendment.

If you want to speak to his amendment, I have no difficulty, but if you are going to pursue what Mrs. Cunningham was on, that actually was an aside. We were not dealing with that. By the rules of the amendments that have been brought forward, we have to deal with Mr. Philip's amendment first. Okay?

Mr. Hampton: Except I merely want to raise a point of order. You have beside you a vacant chair. It seems to me Mrs. Cunningham is asking valid questions about the bill, and Mr. Kanter, I assume, is supposed to fill two roles here. He is supposed to sit on the committee and deliberate on the bill, and he is supposed to be the Ministry of the Solicitor General's representative before the committee to explain the political and policy aspects of the bill.

Mrs. Cunningham has asked a question and Mr. Kanter says he cannot answer it.

Mr. Chairman: I do not think that is a point of order, with respect. In fact, a minister can be asked a question in the House during question period, and under the rules—

Mrs. Cunningham: They never answer, if you want to know.

Mr. Chairman: Just a second. Under the rules of order, they are not required to answer, so I suggest the same thing holds true in a committee. With respect, that is not a point of order. We will get back to Mr. Philip's amendment.

Mr. Philip: On the point of order, though, Mr. Chairman—

Mr. Chairman: The point of order has been ruled not to be a point of order, and there will be no further discussion of the point of order that is not a point of order. Now, we will get back to your motion.

Mr. Philip: Well, I have a procedural question to you, then.

Mr. Chairman: Okay, what is the procedural question?

Mr. Philip: Is it not the normal procedure to have either the minister or the parliamentary assistant sitting up front with his advisers to answer questions? Obviously, Mr. Kanter is answering the way a normal member of a committee might answer, but he is here in a greater capacity than that of another member of the committee; he is here representing the minister.

When we expressed concern that the minister was not present, she gave all kinds of arguments about how Mr. Kanter was so qualified and was on top of this so well and was in constant touch with her. I just think it is a terrible slight to Mr. Kanter that he is sitting as an ordinary member of a committee, when he should be sitting up here with the minister's staff behind him so that he can answer the questions of members of the committee from the position of the ministry. I really think Mr. Kanter and the countless staff that, no doubt, are advising him on this terrible piece of legislation, helping him to defend the indefensible, should at least be here and they should have the status of the minister's chair.

Mr. Chairman: Fine. Thank you very much for that observation. Now we will move on with your motion.

Mr. Philip: I ask you if you do not feel that—

Mr. Chairman: I am not going to rule on that issue. The minister was here. She indicated to us that Mr. Kanter in fact and for all purposes spoke for her. There has not been a request to have her back since she was here initially.

Mrs. Cunningham: Funny thing, is it not?

Mr. Chairman: Well, nobody has made the request.

Mrs. Cunningham: You are right; we have not.

Mr. Chairman: In any event, I would like to get back to your motion amending Mr. Kanter's amendment. I will read it.

What is that supposed to be? The typewriter must have slipped, because it reads that you move that "subsection subsection," so we will strike out the "subsection."

Mr. Philip moves that subsection 4(6) of the act, as set out in the government motion, be struck out and the following substituted therefor:.

"(6) If the council adopts a plan or an amendment to the plan, it shall ensure that the plan or amendment is made available to the public by publishing it in a newspaper having general circulation in the municipality and no such plan or amendment is valid until 30 days after the date the plan or amendment is published."

That is Mr. Philip's motion. He has already spoken to it with reference to the plan. Is there anything further you wish to add?

Mr. Philip: I just want to point out that the reason "subsection" is repeated twice is that—

Mr. Chairman: No, we do not need to do that. That was a typographical error.

Mr. Philip: No, it was not. It is just that Mr. Pelissero's peanuts make me stutter.

1650

Mr. Chairman: Do you have anything further to add to what you previously said before we put in the word "amendment"?

Mr. Philip: The purpose of this is simply to be consistent with the other amendment, which is the 30-day amendment that Mr. Kanter accepted on behalf of the government and the government members supported. It seems reasonable that if you are going to give a 30-day time frame when you introduce bylaws, then if you are going to change the rules by which decisions are made affecting those bylaws, the public should similarly be given 30 days in which it might comment and influence the nature of those regulations or criteria.

I ask that members consider this, because I believe it is consistent with an amendment which the government members have already accepted that I introduced earlier.

Mr. Runciman: I would like to indicate my support for the amendment, but I think it raises a number of questions with respect to Mr. Kanter's earlier references and comparing this sort of plan to an official plan within a municipality and the kinds of provisions that are required under the Municipal Act with respect to notice. I think Mr. Philip's amendment in that respect is quite appropriate, although I think perhaps he might wish to give consideration to revising this amendment again to require that the advertisement of a plan be carried out prior to the adoption by the council.

I am concerned about the fact that there is no appeal process incorporated into this amendment by the government and the fact that it is one thing to require a council to publish a plan following its adoption. I am sure that serves a certain purpose in notifying the general public of the requirements of that plan, but if there are individuals within the municipality who have not had an opportunity, for a variety of reasons, to become knowledgeable about the deliberations of the council or the direction in which the council is going, they simply do not have an opportunity to have input before a final decision is taken.

If you accept the government's proposal as presented, then I think Mr. Philip may want to consider incorporating that into his amendment. If a council is of the view that it has a plan that it wishes to present to the

public, it then meets the publishing requirements and then a public meeting would be held similar to a zoning bylaw or official plan amendment. The members of the municipality would then have an opportunity to deal with and address the matters that may arise as a result of that publication. The current format is really ruling that out and not providing any appeal mechanism, and I think that is unfortunate and unwise. Mr. Philip may wish to comment on that.

Mr. Chairman: Before I go to Mr. Philip, Mr. Kanter, do you or any others members have any comments?

Mr. Kanter: As a matter of procedure, I can appreciate Mr. Runciman's comments and his suggestions that perhaps Mr. Philip might want to further revise his amendment. I think it is important that we keep in mind what is currently before us, and that is Mr. Philip's current amendment, or perhaps his most current amendment, that is written out here.

I would like to hear, and I think it might be useful for all members of the committee to hear, from legal counsel on two issues: one, what the legal effect of this amendment would be; and two, whether it is consistent with the 30-day notice provision for the notice and hearing provision that we adopted previously. I would like to hear those opinions on this amendment before us before we go on to consider alternatives that Mr. Runciman was referring to.

Mr. Chairman: Would committee members care to hear that? Mr. Spring, would you come forward, please?

Mr. Kanter: Perhaps Mr. Spring could occupy a position here.

Mr. Chairman: You can come up here and have a seat here, if you would like. I just thought you felt more comfortable back there away from us.

Mr. Kanter: We just might need him a little more today than we have in the past. That is the only reason I am suggesting it.

Mr. Chairman: It will be better if you are at the witness table. Okay. Perhaps for the benefit of the committee members you would like to address the two issues that Mr. Kanter raised.

Mr. Spring: Thank you. As I understand the amendment that is proposed by the government, actually it is an amendment which would not have the effect of binding the municipal council. The municipal council may adopt that plan, but it is not, as I understand the amendment, bound by that plan. To suggest that any amendments shall not be effective until 30 days after the plan has been published, I hesitate to call it a redundancy, but if the municipality is not bound by the plan that it chooses to adopt in any case, there may be some inconsistency in suggesting a 30-day hoist of any proposed change.

My personal conception of the amendment, my professional conception of the amendment, in so far as the notice provision is concerned, is that it is in effect a type of notice provision itself. It is notice by the municipality that the criteria or the structure within the plan is the structure within which the municipality will consider passing a bylaw.

I am really somewhat hesitant to comment further, because I do not want to get in the realm of anything other than the purely legal. It does strike me that there is not perhaps a parallel structure between the 30-day notice

provision in the other amendment and the 30 days here, simply because this, as I conceive of the government amendment with respect to adopting a plan, is in itself notice. It is notice to those members of the community who are interested that, in fact, the municipal council will be considering or may choose to consider bylaws within the structure outlined in the plan.

Mr. Runciman: I am going to leave that until the end if that is agreeable.

Mr. Philip: Is it not common practice for municipal councils now to give notice when particularly interesting bylaws or regulations are being passed, something perhaps as insignificant or certainly less significant than this, of changing even parking on a particular street so that there can be comment? All this is doing is what municipalities do anyway. I mean, if there is any inconsistency, it is making the first part "may" rather than "shall" anyway.

The whole thing is saying to the municipality, "Here is a whole bunch of things that you might do, if you would like to do them, even though you have the power to do them anyway." The inconsistency is in this section of the act that Mr. Kanter is proposing. I do not see where there is any inconsistency in saying that if you are going to do it, then you have to give notice. Where is the inconsistency? Municipalities do it all the time.

Mr. Chairman: I do not want to put Mr. Spring in the position of commenting on policy. If you are asking him for assistance in terms of his capacity as a lawyer, that is one thing.

Mr. Philip: I do not see where his comments were in his capacity as a lawyer. I do not see a legal argument for these made.

Mr. Spring: I certainly tried to put it within a legal framework. I am reluctant to do otherwise.

1700

Mr. Chairman: I thought, in fairness to a staff member, that what he tried to say was that because there is no obligation on the municipality to do that thing, why should there then be a mandatory publishing? I do not want to put him in a difficult position.

Mr. Philip: That is precisely the point, though. If there is no obligation in the first part, then why oblige them to publish it in the second part, which is what Mr. Kanter is doing? I am simply saying that if Mr. Kanter wishes to be inconsistent, I can at least improve his inconsistency. If you are going to do it anyway, and it does not make an awful lot of sense to do it, I am saying let's at least do it well. That is what my amendment is trying to do.

Mr. Chairman: I think your amendment, Mr. Philip, is going back, reflecting back on a decision that has already been made by this committee, that the word "may" shall not be changed to "shall." If "shall" was in there, you would probably be in a different ballpark, but we have already voted on that and it was defeated.

Mr. Philip: But if "shall" is in the first part and you want to be consistent, then the second section, clause (b), is also inconsistent with "shall."

Mr. Chairman: I am not going to comment any further.

Mr. Runciman: Perhaps this would be properly directed to legal counsel. I am not sure. I am still somewhat confused by this whole approach in respect to having a plan which can be adopted by the council but the council would not be bound by it. Reading the wording of subsection 4(5), it says the plan will set "out the criteria to be considered...in determining whether a bylaw should be passed." Again, going back to Mr. Kanter's comments earlier in respect to drawing the analogy between this approach and the official plan approach, I guess I am trying to tie this in with what Mr. Philip is suggesting in respect to the 30-day notice requirement and having public input into that council's recommendation or recommended plan.

I think even if you look at the official plan of a municipality as a guideline, where the specifics are going to come through with the zoning bylaw, which is required to be in conformity with an official plan, at every step of the way, in terms of looking at amendments, what have you, there is a very detailed process to ensure full public involvement and even an appeal mechanism built in with respect to going to the Ontario Municipal Board.

What I am wondering is, if we feel it is necessary to have a plan developed by individual municipalities that wish to proceed in this direction, why we are not also providing some sort of a mechanism to afford them the same kinds of opportunities they have with other provincial legislation.

Mr. Kanter: I think that is a question more appropriately put to me than legal counsel. Mr. Runciman, we do not feel it is necessary. We feel it might be appropriate in some cases and might be helpful to some councils and therefore we are making it optional, just as for many years, I think the bulk of the time, an official plan was optional at the discretion of local municipalities, but in the case of a zoning bylaw, every zoning bylaw establishment or change had notice and hearing, as in this particular legislation.

We are going on to say that if the council chooses to adopt such a plan, it should make it public. Consolidating my response to you and Mr. Philip, certainly if Mr. Philip or you feel it would not be necessary or helpful to either be explicit that municipalities have this power to establish such plans or that it not be helpful that they should be made public by publishing them, the obvious answer to that would be to vote against either or both provisions. You certainly have that opportunity. I was very surprised that the opposition parties, for example, voted against the notice and hearing provisions.

I realize you were not here, but your colleagues, your party, voted against the opportunity to allow residents in this province affected by these changes, which could be quite significant to their lives, to be heard on this important subject.

I found that quite surprising. I found that approach entirely inconsistent with the approach which you now seem to be taking, that there should be even more procedural safeguards in terms of any such changes. I guess I find it difficult to understand how a party which argues against the right of the public to be notified to have a hearing where a Sunday shopping decision is going to be made is now arguing for more procedural safeguards.

Mr. Runciman: I cannot respond to that because I am not sure what the rationale of the day was.

Mr. Philip: We certainly can, Mr. Runciman.

Mr. Runciman: I still have a great deal of difficulty. Again, perhaps this is going over ground that has already been covered, but the fact that the government has deemed it necessary to take this approach in terms of allowing council the authority to establish a plan, I gather someone somewhere in the bowels of the ministry felt this was necessary. I would assume there was some encouragement required through wording in the legislation to point municipalities in this direction. I am asking the parliamentary assistant if there was some way without this amendment that municipalities could reach the conclusion that they were prohibited from developing some sort of plan to deal with this question.

Mr. Kanter: It is difficult for me to determine what a municipal council might have decided. I think this makes it much clearer. It makes the power of municipal councils much clearer. I leave the answer at that.

Mr. Runciman: I am still perplexed by it. Obviously, there were some discussions within the ministry in respect to tabling this amendment and I have difficulty in understanding why it was decided to proceed with it.

Mr. Hampton: First, I want to refer to Mr. Kanter's remarks because I think we made it pretty clear yesterday what our opposition was to the clauses that we voted against. We made it clear in the discussion that we were certainly in favour of notice periods. We were certainly in favour of all kinds of notice being given to the public and that the public should have awareness of criteria and the way in which the notice should be presented.

When we voted against it, we voted against the manner in which the government was choosing to do it. We thought it was a delinquent manner. We did not think it was sufficient to provide the kind of notice that is necessary. As we said yesterday, it simply is not sufficient in the circumstances for giving all of the people who might be interested in the decision or who might be interested in the matter the kind of notice they might require. It is what you might call pro forma notice and not notice in fact that people might require.

Having said that, I want to move on to the matter Mr. Spring has presented because I think Mr. Spring has put the government in an inconsistent position here. It was Mr. Kanter who asked for Mr. Spring's explanation. Yet, if I hear Mr. Spring correctly, what he is saying is if you look at subsection 4(5) of the bill and then subsection 4(6) of the bill, if the procedure is optional in any case in subsection 5, then it makes no sense in subsection 6 to put a requirement on that procedure. In other words, if it is optional to begin with, it makes no sense to then put restrictions on that procedure, because council would not be bound by it in any case.

Certainly, if Mr. Philip's amendment to subsection 4(6) does not make sense legally because it is inconsistent, then I hardly see how the government's proposed subsection 4(6) makes any sense either. Maybe Mr. Kanter should answer that.

1710

Mr. Kanter: I do not want to put words into his mouth, but the comments I heard from legal counsel with respect to inconsistency and lack of legal impact were with respect to the proposed amendment to my amendment. I do not think Mr. Spring was asked. I do not know if Mr. Hampton would like to ask

him directly or would like someone else to ask him about the legal impact of the amendment the government is moving.

It seems to me there are many situations which are optional but which, if they are done, ought to be followed in a certain course. It has been suggested to me, for example, that an employer need not have a private pension plan, but if he has one, he has a lot of procedural requirements to follow to see that it is carried out correctly. I would just repeat that the comments I heard from Mr. Spring about inconsistency and lack of legal impact related to the amendment to the amendment which is now under discussion. I do not think he was asked to comment on the legal impact of subsection 4(6) of my amendment.

Mr. Hampton: I say to Mr. Kanter that if that is the interpretation he takes, then what Mr. Philip's amendment is aimed at is further stipulating how that process is to occur. If council opts to enter into that kind of process, those are the guidelines it must use once it opts to enter into that process. Mr. Philip's amendment, in my view, is simply a refinement of the kind of process you have already set out in subsection 4(6). To use your words here and not Mr. Spring's, I do not think it is any more inconsistent than the principle you are already setting out in subsection 4(6). In subsection 4(6), you set out a guideline that applies to subsection 4(5); Mr. Philip, and I thank you for it, is simply tightening up those guidelines. I think it is equally as applicable and equally as relevant as the principle you have already tried to establish in subsection 4(6).

Mr. Philip: How is that for a legal opinion?

Mr. Ballinger: You ask two lawyers and you get two different opinions.

Mr. Philip: No, because they are both consistent.

Mr. Chairman: There will not be any comments about lawyers, please. Mr. Kanter?

Mr. Kanter: It was not a question and I have no comments on his remarks.

Mr. Hampton: In fairness to Mr. Spring, he was asked to comment on Mr. Philip's proposed amendment and he did his best. I think we should ask him, if he can, to differentiate between the principle the government is trying to establish in subsection 4(6) and the principle Mr. Philip is also trying to establish.

Mr. Chairman: I am sorry, Mr. Hampton. I think that puts a staff member in a position of being very close to a policy explanation.

Mr. Philip: He was asked a policy question on mine.

Mr. Chairman: Unless it happened while I was absent, I interpreted what he gave as—I think that is part of my job, to make certain the staff is not compromised. I am not going to allow Mr. Spring to get into that predicament.

Mr. Philip: If Mr. Spring was compromised by that question, then surely he is compromised by the earlier question. There is no difference in terms of legality. If the question asked by Mr. Kanter concerning my amendment was a legal question, then the question my colleague is asking him is a similarly legal question.

Mr. Chairman: No. I think the way he put it, he was saying justify the reason one is different from the other.

Mr. Hampton: May I rephrase my question?

Mr. Chairman: If you do not put him in a position of—

Mr. Hampton: Mr. Spring, what I would ask you is, given that subsection 4(5) of the government's proposed amendment is an optional situation—it is something that council would not be bound to enter or not enter, and if it entered it, it could presumably get rid of it or do with it what it wanted to do—is subsection 4(6) then of legal effect, given what has been already been said in subsection 4(5) and what you have said about 4(5)?

Mr. Spring: Yes, I believe it has legal effect in so far as if council chooses to establish the plan, section 6 will require it to ensure that it is made available to the public by publishing it. It will be obligated, according to subsection 6, to publish it in the newspaper, if it chooses to adopt the route provided for it in subsection 5.

Mr. Philip: How does that differ from the fact that if it chooses to change that plan, having chosen to make a plan in the first place, then it has to give similar notice if it decides to bring in a bylaw in the first place?

Mr. Spring: I am sorry, I just missed you there for a moment. Could you repeat it?

Mr. Philip: If it chooses to make a plan, then it has to follow certain procedures. I ask you, how is that different from my amendment, which says that if you have chosen to make a plan and you have followed those procedures, and then at some point in time you decide to make a new plan or to alter your original plan, you have to follow similar procedures? How is that in any way inconsistent?

Mr. Spring: I believe my original comment was that, because the plan itself was not binding on the municipality in any case, I saw some legal inconsistency in requiring council to impose upon council some delay in deciding whether or not to change it. It is not binding on them in any case. My remarks were really confined to that point. Since the plan would not be binding on council in any case, I thought there was some legal inconsistency in requiring council to wait for some time period to elapse before it decided to change a policy it was not bound by in any case.

Mr. Philip: There is not a legal inconsistency in providing certain procedures on the plan that is not required in the first place?

Mr. Spring: I do not believe so, no.

Mr. Chairman: Yes, Mrs. Cunningham. You had your hand up.

Mrs. Cunningham: I thought, when I was out of the room, someone was interested in why I spoke against this original amendment. I just want to clarify my reasons, in case anybody was extremely concerned. I am normally not against public hearings. I would like to be able to explain my position here if my name was mentioned in my absence. Was it?

Mr. Chairman: No, nobody mentioned your name. Mind you, I was absent too, so I will have to ask.

Ms. Collins: I was in the chair. Your name was not mentioned.

Mrs. Cunningham: Funny, a couple of people came down and said it was.

Mr. Runciman: Mr. Kanter did make reference to my party and the New Democratic Party voting against the notice and comment provisions and the fact that we were, through this amendment, expressing concern about public hearings. He could not understand—that is the way he put it—the fact that this party and the other opposition party opposed notice and comment provisions. I think that Mrs. Cunningham is correct in saying that—

Mr. Philip: I think it was a scandalous attack on your integrity.

Mr. Runciman: —she should have the opportunity to perhaps clear the air and answer Mr. Kanter's question.

Mr. Chairman: That is correct. I am advised that is correct, but it was in a generic term, not in a specific term. I do not see that there is any need for Mrs. Cunningham to attempt to defend her honour in the traditional form, because it was generic as opposed to specific.

1720

Mrs. Cunningham: Generic, I thought, though the party was mentioned, spokespersons for the party.

Mr. Chairman: That is generic.

Mrs. Cunningham: It may be generic in your party, Mr. Chairman, but it ain't generic in ours.

Mr. Chairman: I think we would spend more time debating whether you should have the opportunity to address—

Mrs. Cunningham: I would suggest you just let me do it and get it over with.

Mr. Chairman: —the slight on your character.

Mrs. Cunningham: I do not feel slighted. If Mr. Kanter said something about our party or our position here, I do not feel slighted at all.

Mr. Chairman: Go ahead. I am going to have a peanut break here.

Mrs. Cunningham: He has never said anything that would cause me to be slighted. He has been a bit tough and sometimes not always right, but he has always been polite.

Interjection: He could use it in his householder.

Mrs. Cunningham: He may need it in his householder.

Mr. Kanter: I like the polite part and something at the beginning. We will just maybe take out the words in the middle. You know—dot, dot, dot.

Mrs. Cunningham: That is what you did when you said we never even spoke against it.

Mr. Chairman: Can we get on with this?

Mrs. Cunningham: With my reasons?

Mr. Chairman: Yes.

Mrs. Cunningham: It will take me some length of time, but I will proceed to try to explain why. I think we have to go back to the beginning on this government motion, Bill 113, and why it is here in the first place, why the government felt it was necessary.

Mr. Chairman: No, no, no.

Mrs. Cunningham: It all relates to my reasons.

Mr. Ballinger: You are going to filibuster.

Mrs. Cunningham: No, I am not. I am making some very important points that Mr. Kanter will be able to use in his householder.

Mr. Chairman: I would not want to be restrictive on your right to speak, Mrs. Cunningham.

Mrs. Cunningham: All right, I will only say five or six things then. The reason for this amendment, as was put to us, is that the public, in coming before this committee, thought this would be a good idea. Quite frankly, that is not the case.

Mr. Kanter: On a point of order, Mr. Chairman.

Mrs. Cunningham: There are no points of order, Mr. Chairman. You have said that to me twice already today.

Mr. Chairman: I have to hear the point of order.

Mrs. Cunningham: Personal privilege would be better.

Mr. Kanter: No, no, just to clarify, are we now debating Mr. Philip's amendment to my amendment? I would like to be clear on that, Mr. Chairman. I am sure you will be clear on that when the speaker makes her remarks, that she is speaking to Mr. Philip's amendment to my amendment. That is the topic under discussion.

Mr. Chairman: That was what I was trying to clarify. We read it, Mrs. Cunningham.

Mrs. Cunningham: When I leave this room for two hours not much happens. Oh, that one, yes.

Mr. Philip: I feel—

Interjection: You feel slighted.

Mrs. Cunningham: No, nothing to do with you.

Mr. Philip: I feel I have just been slighted, Mr. Chairman. "Nothing much happened." I introduced two major amendments.

Mr. Chairman: I can understand why the Hansards are not turned out on time. With five people speaking at one time, it is impossible.

Mrs. Cunningham, I would like you to confine your comments.

Mrs. Cunningham: I am speaking only to the statement that was made that the representatives of the Progressive Conservative Party were not in favour of public hearings.

Mr. Chairman: How about if I have Mr. Kanter withdraw that statement?

Ms. Collins: It is all on the record anyway.

Mr. Kanter: Mr. Chairman, I will—

Mrs. Cunningham: That is not fair, because I normally am in favour of public hearings and I do not want anyone to mislead members of the House, quite frankly, as the Solicitor General (Mrs. Smith) did, totally out of context today. That happens to be the case. I had no chance to stand up and defend myself. If that was out of context, I would like Mr. Kanter to withdraw it. He has a choice of withdrawing it or allowing me to speak to it.

Mr. Kanter: I will withdraw.

Mr. Chairman: He has indicated he will withdraw it. In the interests of brevity, is that all right?

Mrs. Cunningham: I appreciate that, Mr. Kanter, and I do not want to know why you did it.

Mr. Chairman: All right. Are there any further comments before we vote? I should not—well, I asked the question. Seeing none—

Mr. Philip: I think—

Interjection: You have an amendment now, do you not?

Mr. Chairman: You cannot put another amendment on until we have dealt with yours, Mr. Philip. We are now voting on the amendment. Do you wish a recorded vote?

Mr. Philip: Yes, please, but I want my colleague from the Conservative Party at least to be here to vote with us.

Mr. Chairman: All right. We are voting, Mr. Runciman, on Mr. Philip's amendment.

Interjections.

Mr. Chairman: Do you suppose we could get on with the vote? Thank you.

Those in favour? Mr. Ballinger—

Interjections.

Mr. Chairman: I am going home in a second.

Interjections.

Mr. Chairman: We are now in the midst of a vote and there is supposed to be silence.

The committee divided on Mr. Philip's motion, which was negatived on the following vote:

Ayes

Cunningham, Hampton, Philip, Runciman.

Nays

Ballinger, Chiarelli, Collins, Kanter, Pelissero, Sola.

Ayes 4; nays 6.

Mr. Chairman: We are now going back to Mr. Kanter's original motion.

Mr. Runciman: The motion I have submitted you indicated would be near the end of the meeting. Could you give us an indication when that might be dealt with?

Mr. Chairman: We have agreed on sitting until six o'clock, the length the House sits.

Mrs. Cunningham: We can do it at maybe 5:40, if there will be a lot of debate on that one.

Mr. Chairman: All right. The clerk will distribute copies of it in the meantime. We will deal with—

Interjections.

Mr. Chairman: Unanimous consent? Well, you do not know what the motion is yet. The motion—

Mrs. Cunningham: He is a learned member, a former minister; I am privileged.

Interjections.

Mr. Chairman: We will distribute copies of the motion. When I have seen it, I will indicate—I think we will get unanimous consent to the timing. We are back to Mr. Kanter's original amendment. Are we ready to vote on that, committee members?

Mr. Hampton: I have an amendment to subsection 4(6) and it reads as follows—

Mr. Chairman: Perhaps you would like to bring it up here and I will read it. We need copies for all of the members, too.

Mr. Hampton: I hope you will be able to read my writing.

Mr. Chairman: You mean, it is not all typed out? To begin with, that

is the same motion we just completed, only in a different way. I do not want to make a hasty judgement on this, but I think it is probably out of order. You are really simply changing the time frame on a matter we have already dealt with, or the number of times it would be published.

I would like a few minutes to decide on this. We will recess for five minutes. I would like an opportunity to review it. We will also get a copy of that amendment for members so they know what I am going to rule out of order or rule in order, whichever is the case.

The committee recessed at 5:30 p.m.

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Mr. Chairman: We are back in session, members, and I have considered Mr. Hampton's motion. I initially thought it might be out of order. I have given due consideration to it and I rule that it is in order. Have we read this?

Mr. Kanter: I have not seen it.

Mr. Chairman: I will read it.

Mr. Hampton moves that subsection 4(6), as set out in the government motion, be struck out and the following substituted therefor:

"(6) If the council adopts a plan, it shall ensure that the plan is made available to the public by publishing it in three consecutive issues of a newspaper having general circulation in the municipality."

Mr. Hampton: We have discussed frequently here the need for adequate notice, the need to ensure that notice does reach the public, that as some of the matters which might be part of any such Sunday shopping bylaw would be matters that would affect a great number of people in the community—

Interjection.

Mr. Chairman: Order, please. Mr. Hampton has the floor.

Mr. Hampton: As I was saying, as anything that might be included in a Sunday shopping bylaw would be potentially of considerable importance to a number of people in the community, and as we would want to ensure that they do in fact receive notice, merely publishing such a plan—I want to be sure we are on all fours here—in a newspaper once would not necessarily ensure that the public would receive notice of it, that it would be made available to the public merely by having it published on one occasion.

I would say that even having it published on three consecutive occasions would not necessarily bring it to the attention of all those who might want to receive notice of it, but publishing it in three consecutive issues would at least ensure that it would more likely happen. For the edification of other members of the committee, I can give you an example that happened in the not too distant past with this exact sort of situation. The Workers' Compensation Board last spring, after numerous complaints received from the logging industry across northern Ontario, decided it was going to do a review of the logging industry. They published one notice of the logging review, giving the dates and times of meetings in newspapers in Thunder Bay, Dryden, etc. However, when you are dealing with an industry as disparate and as spread out

and as divergent in times and places of occupation and interest as the logging industry, that one notice was not received by probably 80 per cent of the people who might be interested in it.

The Workers' Compensation Board, to get adequate input, was forced to provide notices on three or four consecutive occasions in the newspapers in question in order to be able to take advantage of all the groups and parties who might have wanted to appear before the investigative committee.

Merely to advertise the plan once is not at all adequate in terms of bringing it to the attention of those people who might be interested in it. Advertising it in three consecutive issues, I would argue, would provide adequate notice, would bring it to the attention of the various members of the public who might be interested in it. Therefore, the reason for the amendment.

Mr. Chairman: Mr. Kanter, and then we had indicated that Mr. Runciman had put before us a motion and we were going to deal with it before six o'clock.

Mr. Kanter: That is precisely my point. I was going to suggest we defer consideration of Mr. Hampton's motion in order to consider Mr. Runciman's, particularly as it relates to the minister and the minister is here now. I think it would be most appropriate to consider his motion now and defer consideration of Mr. Hampton's to our next meeting.

Mr. Chairman: Are you agreeable with that, Mr. Hampton?

Mr. Hampton: That would be fine with me.

Mr. Chairman: Then we have unanimous consent, I gather, to stand down consideration of Mr. Hampton's amendment to Mr. Kanter's amendment. Mr. Runciman, we all have a copy of the motion before us. If you like, I will read it.

Mr. Runciman moves that the committee formally request the presence of the Solicitor General for the duration of its deliberations on Bill 113.

As you can see, the minister is here.

Mr. Runciman: I am pleased to see the minister here and welcome her to the committee hearings, or deliberations as the clerk advises. Perhaps the minister may want to comment before we go any further in respect to this motion. Perhaps it is redundant in that she herself can recognize the desirability of her presence during these deliberations as we approach the point, at some time in the very near future, where the bill is going to be finalized in this committee and go to the House for final deliberation. I think it is indeed a critical period of time in terms of this committee's consideration of the legislation. I think it falls in line with Mr. Philip's comments earlier about the role of the parliamentary assistant in this committee.

Mr. Chairman, the motion also is a result of your comments when Mr. Philip raised the question about the role of the parliamentary assistant. One of your responses was that the committee has not made any request of the minister to be present. I thought we should make an attempt to correct that situation as advised by yourself.

Mr. Chairman: The reason I made that was that the minister had

indicated at the outset that she would be available at the request of the committee at any time we wanted her. In fairness to you, you were not present at the initial opening. That was the reason for that.

Mr. Runciman: I hope we can have a brief few moments of discussion of the merits. I understand the minister has a busy schedule and there may be occasions when her schedule will preclude her from being present, but I think it would be appropriate and helpful if at every opportunity she could indeed be present during the remainder of these deliberations.

1750

Mr. Chairman: Would you like to hear from the minister, or are there any other— Do you wish to speak to the matter or have the minister—

Mr. Ballinger: I will speak, but I will certainly give way to the minister, though.

Hon. Mrs. Smith: I would like to put my co-operation to the committee as much as possible. I want to say that within specific limits. Basically, we have discussed the role of parliamentary assistant and different committees have handled different bills differently, I believe.

For instance, Mr. Nixon handled the total of one bill, and other than coming to the introduction, the Treasurer did not come at all. I think at the beginning of the discussions of this bill I made it very clear how we were dividing the responsibility in this territory for this bill. There was no objection raised to it. Basically, my parliamentary assistant would have the responsibility for the bill in committee; however, I would make sure I was available to the committee at the clause-by-clause time.

With that in mind, if I can go back to my calendar for the time that was slated for clause by clause; I had completely blocked it off in my calendar. When I was not here with the committee, I was working in my office and at any time it was needed to get my opinion on something, because basically you understand I do not have any illusions about my power here, I can give you my advice. I can express my intentions, but the bill is in the hands of the committee. We all understand the meaning of that.

What I had to say, during those first days, when clause by clause was under discussion, I said. I tried to be co-operative. I believe I was here whenever I was useful to the committee. I would like to be as co-operative as possible in the ongoing time. I want to be clear. You just said, you are sure that I must have other commitments, and that is true. I blocked off that full time and the scheduled time. I have other commitments that were made long ago in the upcoming weeks, but I will certainly do everything I can to come when requested and particularly be always at the other end of the phone for any questions you want to refer to me through the parliamentary assistant, who then will speak on my behalf as he has up until this time.

I think you, yourself just said, I would point out to the committee, to firmly commit me to all the time that you may need from now until the end, is more than I can be committed to because I already have other commitments.

Mr. Philip: I think at the time that we were going to have the hearings, we recognized that it would be unreasonable to have the minister present at all of the hearings. However, when we got out there and we had the hearings, the minister had said to us that she had consulted municipalities.

We found out that was not the case. We had 56 municipalities, or representatives of them and/or elected representatives appear. Fifty-five of those municipalities or their elected councillors or alderman said that this bill was seriously flawed, that they had not been consulted prior to the introduction of the bill. They presented their views. These views are not expressed in this bill. Subsection 4 is clearly contrary to what 55 out of 56 deputations from municipalities said to this committee. It seems to me, that it is reasonable, if the minister has not consulted with these municipalities, or anyone else for that matter, certainly on Bill 114 Mr. Sorbara did not consult with any of the trade union groups before he introduced it.

At least, it might be useful, if you were here, to answer questions and for us to present the views of those municipal councillors who were not consulted in advance, and at least have on the record your responses to their concerns, which are serious concerns. They are people who are elected municipally. I think that the local people often do know what is right and they have elected these people.

These people, having been elected locally, are saying that this bill is inappropriate, that you have not consulted them, that subsection 4 is dead wrong, that they have proposals that could correct the bill, but that you have not responded to those concerns or proposals. I think that in the light of that, it is reasonable to have you here as we move the amendments because some of us, at least the opposition members, have listened and those concerns are reflected in the amendments which your members in block seem to be voting down over and over and over again, since the parliamentary assistant does not seem to be very capable, although he is a very bright person, of defending the indefensible—

Mr. Chairman: Wait. Do not say that about any member. We are all honourable members. I think that is uncalled for.

Mr. Philip: I said capable. I would not be capable of defending this bill. I do not think that Pat Lawlor, if he were here, could defend this bill. In fact I know that Mr. Kanter's uncle, who is one of the best lawyers that I have ever had the pleasure of knowing, Mr. Max Rapoport, could not defend this bill if he were here.

Mr. Chairman: Can we end the genealogy and get back to— Madam Minister do you have any reply?

Hon. Mrs. Smith: My role here during clause by clause is to discuss the clauses and not to respond to all the deputations that were received during the summer. That was never intended, nor would it be my role now. I am sure that everybody here would concur that there is nothing I could say to the honourable member that would convince him of the wisdom of the bill. Such discussions become academic at best. He has since confirmed what I was about to say, that nobody here who agreed with the bill would be considered in any way understanding of it by him. If you agree with the bill, you obviously do not have any intelligence, you might say. I am not going to satisfy the member, either now, or if I sit here for five years. It is not my intention to respond. I will deal with clause by clause only.

Mr. Philip: With respect, I did not say that the members here who disagree with our position or the position of the majority of the population of Ontario, who are real people and who made presentations to you, made presentations that you did not listen to, that they are stupid people. I never said that.

I said simply that you have not listened to the people and that we are moving amendments based on what they said and since you have not consulted them, since you have not listened to them, at least they should have the right to have you respond to the amendments that are based on the input which they have made. Now, I am sorry that you are so insensitive to the municipalities that you cannot see that point.

Mr. Chairman: Mr. Runciman, it being six of the clock, I know you have raised your hand. The bell has not rung for the House yet so you still—

Mr. Runciman: A very brief comment. I appreciate what the minister is saying and when we put this motion forward it is in respect, I think, to the importance of having her present during this stage of deliberations.

Mr. Ballinger: —things like that? That is the exact reason why—

Mr. Chairman: Mr. Ballinger, Mr. Runciman has the floor.

Mr. Runciman: There may be opportunities. I made the comment that there may be times when the minister will not be able to be here. I think the fact that she has indicated that she has blocked off this time to be available.

Mr. Chairman: No, I am sorry Mr. Runciman. She blocked off the three days—I think that is what she was saying—we had scheduled for our clause by clause.

Mr. Runciman: I think it is important that she be available throughout this period and that whenever possible—and I think that should be the bulk of the time—she be present because I think it is going to be helpful for all of us.

Hon. Mrs. Smith: I will be present whenever possible.

Mr. Ballinger: I want to respond because we are supposed to be dealing with a motion that says "for the duration." The intent of the motion for Mr. Runciman was to have the Solicitor General sit there for the duration of the clause by clause. I want to say to you, as we all sit here as members of this committee, the exact reason why that should not happen is because of the facade that Mr. Philip just put on in here so that he can make political statements and make political hay and go to the press and give his own press release. I do not think any one of us should subject any minister to this kind of environment whatsoever because it is not helpful. It is not constructive and it is not in the best interests of the bill.

Mr. Chairman: I have not heard the bell so I do not know whether they are out of order or what. All right carry on.

Mr. Philip: It is called democracy, Bill.

Mr. Ballinger: That is not called democracy, Ed. Come on.

Mr. Chairman: We have a motion before us. I think Mr. Runciman has indicated that it is perhaps not as expansive as it is. I do not know whether there are any amendments to be made to it. If not, are you ready to vote on the motion.

Mr. Runciman: Certainly my intent was not be that restrictive. I think I indicated that in my comments that there has to be some appreciation

of the work schedule that a minister is faced with. At the same time, I think it is important that, at every opportunity, she be present. I am prepared to amend my motion if indeed that will placate some of the members of the government, to "whenever possible."

Mr. Chairman: I think the minister has already undertaken to do that. She indicated that at the outset, and again, you were not here.

Mr. Runciman: I disagree, from what I have heard today, that that is her intention. I think this should be given priority at all times until we have finished deliberations on this bill. This committee should have the priority of the minister, if at all possible.

Mr. Chairman: You have indicated an intent to amend the motion. It being six of the clock, however, unless I have—and I do not know. Can we do it by unanimous consent to deal with it after the House has adjourned?

Mr. Runciman: Certainly my intent is on the record, so perhaps we can go ahead with the motion.

Mrs. Cunningham: I have one more point, just to understand what it really means, for my sake. We are basically meeting on Mondays and Tuesdays after question period. Is that correct?

Mr. Chairman: After routine proceedings.

Mrs. Cunningham: That is the amount of time that we are all going to block off as far as possible. I mean, it is true of us too.

Hon. Mrs. Smith: The committee was regularly scheduled, so you were scheduled. I was not scheduled. I was scheduled for other things at this time. I just wanted to point out that my calendar did not have this time blocked off, because I am not on this committee. Yours did, because you are a member of this committee. There is a difference.

I will be available. My statement was submitted from the beginning of this. It is in the hands of the committee, and sometimes my presence here may even delay the work of the committee, but I want to help the committee when it is helpful.

Mr. Ballinger: This is a delay—

Mrs. Cunningham: I think this is a serious discussion.

Mr. Chiarelli: On a point of order: The bell has rung.

Mr. Chairman: It having been drawn to my attention that the bell has rung, the motion for adjournment is in order.

Mrs. Cunningham: We have the minister here. She has stated that, as far as possible, she will be here. Some of us have had to make other arrangements too, because we did not know we were going to be going all fall either.

Hon. Mrs. Smith: The justice committee sits all fall.

Mr. Chairman: I do not want to cut you off, Mrs. Cunningham, but the rules require that when it is brought to my attention that the House has

adjourned—we stand in recess then until Monday of next week after routine proceedings.

The committee adjourned at 6:05 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Monday, October 24, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)
Chiarelli, Robert (Ottawa West L)
Cureatz, Sam L. (Durham East PC)
Farnan, Michael (Cambridge NDP)
Hampton, Howard (Rainy River NDP)
Kanter, Ron (St. Andrew-St. Patrick L)
Mahoney, Steven W. (Mississauga West L)
McGuinty, Dalton J. (Ottawa South L)
Offer, Steven (Mississauga North L)
Polsinelli, Claudio (Yorkview L)
Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer
Campbell, Sterling (Sudbury L) for Mr. McGuinty
Collins, Shirley (Wentworth East L) for Mr. Mahoney
Cunningham, Dianne E. (London North PC) for Mr. Sterling
Pelissero, Harry E. (Lincoln L) for Mr. Chiarelli
Runciman, Robert W. (Leeds-Grenville PC) for Mr. Cureatz
Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service
Mifsud, Lucinda, Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, October 24, 1988

The committee met at 4:54 p.m. in room 228.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Chairman: I recognize a quorum. Whence last we met—it sounds like the title of a song—we were discussing a motion by Mr. Runciman. Just for the benefit of the committee members, so they remember what we were discussing, Mr. Runciman had moved that the committee formally request the presence of the Solicitor General (Mrs. Smith) for the duration of its deliberations on Bill 113. Mr. Runciman, you have the floor.

I think you were just wrapping up as we closed the last meeting, so you have the floor, Mr. Runciman.

Mr. Runciman: I had contemplated changing the wording of the motion to try to appease some of the concerns of Mr. Ballinger. The wording was rather rigid in terms of requiring the minister to be present during the remainder of the hearings. I am prepared to be flexible on that if it is a major concern to Mr. Ballinger and others.

Mr. Ballinger: With that exposé in the House last week, I would not support it ever.

Mr. Runciman: I may simply place some other time constraint or time guideline, if you will, in terms of the minister's appearing. I would like to perhaps even be as flexible as saying that the minister at least appear once per week during the sessions of this committee for the remainder of its deliberations. I do not think that is going to be too difficult in terms of fitting it into the minister's schedule.

As Mrs. Cunningham pointed out last week, we have all slotted in the four hours and set them aside for the remainder of the committee deliberations on this bill. I think it should not be all that difficult for the minister, considering the gravity of the issue, at least to make an appearance before us. It may be on Tuesday afternoon, as we are sort of sitting two days a week, Monday and Tuesday. If she had an appearance before us for half an hour or an hour every Tuesday, it would still give us an opportunity perhaps to have her respond to some of the concerns that have been raised over the preceding two days in a direct fashion. I think that would be most helpful to members of the committee.

I am prepared, Mr. Chairman, if you will permit, to reword the motion to indicate that we request the minister's appearance before the committee at least one day during the committee's weekly deliberations.

Mr. Chairman: You do not need my permission to withdraw the motion, obviously. I gather you are withdrawing the motion that you have placed and you are putting a new motion in its place.

Mr. Runciman moves that the committee formally request the presence of the Solicitor General for at least one day per week during its deliberations on Bill 113.

Mr. Chairman: Is everybody clear on what the motion is that we are voting on? Do you wish to speak to it, Mr. Kanter?

Mr. Kanter: Yes, I do. I cannot support this motion, even as amended. I think the minister indicated in her very quick appearance here last week that she wants to be as co-operative as possible, but that does not mean tying herself down to rigid and unrealistic schedules. Quite frankly, to appear once per week for half an hour could be a very mechanical, ritualistic, tokenistic kind of thing. I think the minister indicated she wanted to be here when it would help the proceedings of the committee. That has been her position consistently.

The point Mr. Runciman makes that we have put this down in our calendar and therefore the minister should be able to do so too is correct as far as we are concerned; it is not correct as far as the minister is concerned. She did block out the period of time that had previously been agreed to, the three days several weeks ago. She cannot commit herself to being available every Tuesday or Monday or whatever for as long as this committee takes. That is unrealistic, I submit, for any minister. In defeating this motion, or certainly in my urging members of the committee to defeat this motion, I am not suggesting—

Mr. Runciman: That is better.

Mr. Kanter: Thank you—that the minister will not continue to be co-operative, as she has been in the past, when it will help the proceedings in this committee.

Mrs. Cunningham: Perhaps I would just like to make an observation. When we started the deliberations on these bills, it was all our feeling that we could probably wind down in three days. If that was not realistic, no one seemed to talk about it at the time. I think all of us have had to set aside, in this case, Monday and Tuesday afternoons from three o'clock or whatever time we can be here after our business in the House is finished until six o'clock in the evening.

Given the complicated amendments that both the government and the opposition parties have put forth and the points that are being made in argument in favour or against, it is really the minister's responsibility to be listening to this and to be gleaning some more new information, as the rest of us are, in trying to make this legislation work. I say that with respect.

1700

I know sometimes we have been rather lengthy in debate. On the other hand, there are a couple of amendments that we have not dealt with yet that I think are very important for the minister to be listening to the debate on. One would be as put forth by the government. I asked for some legal advice on that one, and I think it is important that we all listen to that.

There are others that I think are rather important. One has to do with the size of the drugstore. We now have new information or new concerns that are being raised publicly that I think all of us have a responsibility to listen to. I do not think any of us may want to agree with some of those concerns, but I think we all have the responsibility to listen to them.

I would love to hear the government's arguments and the Solicitor General speak to them with regards to the fines. I am sure there was some thinking that went in there. We have not really debated that, but I would like to hear the arguments as to the numbers. I can see that with the majority vote on this committee and with the clout Mr. Kanter seems to have over his colleagues on some occasions—

Mr. Ballinger: You are so kind.

Mrs. Cunningham: It does not take a lot of smarts to kind of figure out how the vote is going to go, Mr. Ballinger.

Mr. Ballinger: Welcome to reality.

Mrs. Cunningham: I know. I hope I do not have to sit here like this for very much longer listening to this and watching this. Anyway, as we know, we are probably going to be faced with an overwhelming majority vote on this motion.

I think I would feel much better if Mr. Kanter would speak to us at this time as to the Solicitor General's intent. At the very beginning, all of us thought the Solicitor General would be here for the wrapup of this bill. I thought she said last week she would be here as appropriate or as far as possible. I think that is all Mr. Runciman really wants out of this motion, that she be here. Let's hope, if we are going to be sitting a couple of afternoons, that something is important enough for her to be here on either one of those afternoons. I would like to hear what the intent of what Mr. Kanter just stated really is.

Mr. Chairman: I have Mr. Hampton and Mr. Farnan. Would you like to hear Mr. Kanter's reply?

Mr. Farnan: Absolutely.

Mr. Chairman: Do you have anything to add, Mr. Kanter?

Mr. Kanter: I do not have anything to add to what I said.

Mr. Hampton: I want to reply, first of all, to Mr. Kanter. I want to congratulate him on his haircut. I quite approve.

Mr. Chairman: Let's keep the comments to the facts and nothing but the facts.

Mr. Hampton: I think it is a fact that Mr. Kanter has a haircut. That is an obvious fact.

Second, I want to reassure Mr. Kanter so that there is no mistake. He appears to be concerned that if the minister were to appear every Tuesday for half an hour before this committee, it would become somewhat ritualistic and mechanical. I want to assure him, and I think I can speak for both opposition

parties here, that we would do our utmost to ensure that it would not be a mechanical and ritualistic time when the minister would appear. We would do our utmost to be sure that she was very busy, that she had all sorts of questions to respond to, that those questions made their way into Hansard and that they were widely distributed across the province so that everyone could hear her responses to the questions. He need not worry about that. It would not be ritualistic and mechanical. If anything, it would be a time of very lively debate, as I am sure he witnessed when the minister was last here discussing things with Mr. Runciman and Mr. Philip.

The other point I wanted to make is that I think we have to remember this is important legislation. We trucked around the whole province this summer. We listened to all sorts of groups. Well, some of us listened to all sorts of groups. We asked all sorts of questions. We stimulated all sorts of debate around the province. I think the minister would not want to miss this, especially now that we are at this very important procedure of dealing with the nuts-and-bolts outcome of what we have heard and what we have distilled and what will perhaps go on to become the new legislation. I think for that reason it would very important for the minister to be here.

Finally, I want to say to Mr. Kanter again that one of the things that has bothered me throughout these hearings is the variety of roles Mr. Kanter appears in. I am never quite sure when he speaks if he is speaking for the minister on one occasion or if he is speaking as the Liberal whip on the other side of the tables and letting everyone know how they are supposed to vote on a given motion.

Mr. Ballinger: Who is the whip on your side?

Mr. Campbell: He is in Australia.

Mr. Hampton: The whip is in Australia, but I am sure he will be informed of your remarks, Mr. Ballinger.

Mr. Farnan: Our deputy whip is here.

Mr. Hampton: That is right.

Mr. Chairman: Continue.

Mr. Hampton: There has been some confusion as to Mr. Kanter's role in that respect, and then from time to time, when people from his own constituency have appeared before us, he has sometimes moved into another role. Finally, sometimes he has actually performed, as I guess we are all supposed to, as an independent member of the committee. From the confusion that stems from all of Mr. Kanter's roles, it might be very helpful for the committee if the minister were here to clear up some of that confusion because, believe me, it is very difficult to say, when Mr. Kanter speaks, if this is the government speaking, if it is Mr. Kanter the private member speaking, if it is Mr. Kanter the government whip speaking or if it is Mr. Kanter the member of the committee speaking.

For that reason, I support Mr. Runciman's motion. I think it is timely and, as I said, we can assure Mr. Kanter and all of the government members that the minister's visits with us would not be mechanical and would not be ritualistic; they would be very interesting ones indeed.

Mr. Farnan: I too would like to add my voice in support of my distinguished colleague in requesting the presence of the Solicitor General for the duration of the deliberations concerning this very important piece of legislation.

In adding my support, I have to comment on the benefit the presence of the Solicitor General has for these meetings. Obviously, because it is such an important piece of legislation and because the Solicitor General ultimately must carry the responsibility for the legislation, it is really important that she have the benefit of the insights we have gained, collectively and individually as we toured the province.

1710

The Solicitor General is somewhat at a disadvantage. While she has had the benefit of advice, and I suspect good advice, from the people in her ministry who are advising her as to the nature of this legislation, nevertheless the Solicitor General did not have the advantage that we as committee members had when we had the wonderful opportunity to traverse the province and to listen to so many different groups. We had the opportunity to listen to church groups and retailers large and small. There were delegations from co-operative groups and women's groups. You may even recall the delegations we had from children's groups when they presented those wonderful paintings showing how this particular legislation could adversely affect their Sundays as they were prior to the passing of this legislation.

We have perhaps come back to Toronto as different people than we actually were when we left. We are better informed. We have a vast array of insight and experience as the result of our travels. Therefore, we are speaking perhaps as more informed members of the Legislature, and so we should, seeing that it was a duty entrusted to us to become thoroughly informed as to what the people of Ontario were thinking about this particular legislation. We come back, in a sense, changed. I know my Liberal colleagues will understand that because they too shared those very meaningful presentations; no doubt their thinking was somewhat affected as a result.

It is sad that the Solicitor General missed that opportunity. We accept the fact that the Solicitor General's responsibilities are very onerous. She cannot be expected, I suppose, to travel the entire province. So it is our responsibility to transmit to her the insights we have gained. As we look at this bill and as we analyse the bill and discuss it and make suggestions, it becomes very critical that the Solicitor General herself should be present to gain from the insights not only of the opposition members, but also of her own colleagues who I know have been immensely influenced by what they heard from the people of Ontario.

We have to look at the value of having the Solicitor General present, and the value of having the Solicitor General present for interim periods or for a continuous period of time. Let's just think about the wonderful value it was when the Solicitor General was here. You will recall how we had quite an animated debate about whether I should be allowed to question the Solicitor General for five minutes when she was here. That was a rather sad situation, because here was the minister responsible for the legislation being denied the input of a member who had travelled the province and who had obviously grown in the process and had a richer insight into the whole substance and detail of this very important piece of legislation.

It is important not only that the Solicitor General be present, I would

put to my honourable friends and members of this committee, but also that we do not set up a false wall of protection with the Solicitor General. It was an unfortunate situation that when the Solicitor General was present—

Mr. Ballinger: If I wanted Jimmy Swaggart, I would turn on channel 6.

Mrs. Cunningham: Or look in the mirror.

Mr. Farnan: I have to say to you that I respect the Solicitor General.

Interjections.

Mr. Chairman: The member for Cambridge has the floor.

Mr. Farnan: I have to tell you, my friends, when the Solicitor General was here, in the limited amount of exposure that the chair—it was not the present chairman, I should add, because I would say as an aside that the present chairman has been extremely fair and used very good judgement on the majority of issues that have come up in the dealings of this committee.

Mrs. Cunningham: When he was not napping.

Mr. Farnan: However, I am sorry that the deputy chair at that time is not present today, because I am very reluctant to make a comment when the person is not here. Maybe I should reserve it. I do believe the deputy chair on that occasion gave a very poor image of the Solicitor General. As we all know, the Solicitor General is well able to defend herself and to defend her views. Unfortunately, on that particular day, as an opposition member, the chair was ruling that you can only have five minutes to address the Solicitor General. Let us come back to having the Solicitor General here in a really free situation and a situation where we are working co-operatively together in order to get the absolute best possible result for the people of Ontario as we look at this particular legislation.

The Solicitor General has played a very key role, not just in the drafting of the bill—we all know how she changed her mind—but having decided that the municipal option was the chicken way out one week and changing her mind, and then, almost like Saul on the road to Damascus, being converted to a new cause. I have to admit that since her conversion she has been very strong in her position. The tragedy of this whole process for the people of Ontario—

Mrs. Cunningham: Could you be more entertaining? Lots more.

Mr. Farnan: I could not possibly hope to replicate the sense of humour and the broad experience of the member for Durham East (Mr. Cureatz). After all, my honourable colleagues on the Liberal benches will have to recognize that the member for Durham East's expertise and brilliance is a result of 14 years of experience in the House, and we all recognize him as a very knowledgeable individual who—

Mrs. Cunningham: The Liberals don't want to hear this.

Mr. Ballinger: Can you blame us, for crying out loud?

Mr. Chairman: Can we get back to the issue, please?

Mr. Farnan: What I am concerned about, and I say this to my friends

on the government benches, is that I am anxious to protect the character and the perception of the Solicitor General as viewed by the public of Ontario. Naturally I was rather upset when she flip-flopped on the issue, but I did say that since her conversion, she has been strong. Unfortunately for the perception of the Solicitor General across the province, we have to some extent been keeping the minister away. I wonder if the Solicitor General would be aware that the government members on this committee will actually vote to deny her presence here. That would be tragic.

If, for example, the Solicitor General wanted to be here, if in fact she felt that her presence here would add to the deliberations, if she felt that her presence here would be recognized by the Ontario public as an indication of her interest in this bill, would it not be tragic if the government members of this committee were denying the Solicitor General the opportunity to participate in these debates? That indeed would be tragic.

1720

As we have gone along, that perception, unfortunately, has been gradually building. You will remember how, as we toured the province, from time to time people talked about the Solicitor General having made a statement that the municipal option is non-negotiable. There was a long period of silence. Everybody was wondering, "Does the Solicitor General still feel this way?" after we had one or two weeks of hearings. The majority of the delegations in those first couple of weeks, as indeed throughout the entire process, were reaffirming over and over again their opposition to the municipal option and their support for a common pause day. There was a feeling that maybe the Solicitor General was going to change her mind, but nobody knew where the Solicitor General was, and nobody heard anything from the Solicitor General. The people of Ontario were left wondering: "Are we making an impact? Have these hearings got any meaning?"

Then, of course, I think we got as far as Peterborough and maybe halfway through the committee hearings and then, lo and behold, in the Peterborough Examiner, word came out again that the Solicitor General really did exist, was alive and well and was making an utterance on this bill. She said on that occasion that the municipal option is the essence of this bill; without the municipal option there is no bill.

It was helpful to know that the Solicitor General was still alive and in fact, in some form, was following the proceedings. Mind you, her response was as a result of being contacted by a very diligent reporter with the Peterborough Examiner who had the get up and go to make the phone calls and track down the Solicitor General and eventually get the comment that everybody was looking for, where she stood on the bill. Give credit to the Solicitor General. She had not changed her views, despite the words of the people of Ontario.

The committee continued its travel and the Solicitor General again went into hibernation, not to be heard of again until we got back to Toronto. Lo and behold, the Solicitor General showed up in the flesh and was present to accept some questioning.

It was at that time, you will recall, that the Solicitor General was protected by the chairman of the committee from my questioning. I believe that it was really an error in judgement on the part of the deputy chairman at that time, because the Solicitor General does not need defending. I have watched the minister in the House. She stands up and she handles those questions. She

responds and she is tough. She may be wrong, but she is tough. We have to give her credit for that.

Let us weigh the merits of intermittent presence versus continuous, ongoing presence.

Mr. Chairman: The motion, as replaced—

Mr. Farnan: Requests the presence of the Solicitor General for the duration.

Mr. Chairman: No, at least one sitting per week. The other one has been withdrawn, so I ask you to direct your remarks to that.

Mr. Farnan: I would appreciate it if you would pass—this is the motion I am speaking to that was given to me by—

Mr. Chairman: Mr. Runciman changed it. You may not have been here.

Mr. Farnan: May I have a written copy of that so that I can continue my remarks?

Mr. Chairman: The only thing that was changed was that it should read "the Solicitor General for at least one sitting per week for the duration of its deliberations on Bill 113."

Mr. Farnan: Can I read that so that I have got it accurately, Mr. Chairman?

"I move that the committee formally request the presence of the Solicitor General for at least one sitting per week for the duration of its deliberations on Bill 113."

Mr. Chairman: That is right, so I would ask you to confine your remarks to the—

Mr. Farnan: Thank you, because that means the remarks I have made were in context. The general concept that we are discussing needs to be focused to the more specific request that has been made by my honourable colleague. Now, as to "at least one sitting per week," I think what the member is talking about here is continuity, and continuity is important. Let's look at the comparison that I drew. During the committee hearings, as we travelled the province, the Solicitor General was not there at all and we had one comment from the Solicitor General halfway through the hearings. When we did meet in Toronto, the Solicitor General was present.

I have to tell you that, much as I admire Mr. Kanter—and I have grown to admire him immensely throughout the course of these hearings; not only do I admire him, but my duck admired him, and I know that Mr. Kanter admired my duck, because he commented about my duck very often. In fact when I came into the room today, I would say that all the government members of the committee asked where my duck was. It shows a sensitivity to my feelings that they would care so much in this regard.

Mr. Chairman: Can we move back to the issue at hand?

Mrs. Cunningham: What do we pay Mr. Spring to sit here and listen to this?

Mr. Chairman: I do not know but—

Mr. Ballinger: Whatever it is, it is too much.

Mr. Farnan: I was talking about Mr. Kanter's very clearly demonstrated abilities which have been evident in this committee. On one occasion I saw Mr. Kanter collect out of nowhere three government members in order to support a motion that was being placed before the committee, when in fact the government members did not have a majority. Off he ran into the corridors and quickly hustled back the members so that he could maintain the control.

Mr. Campbell: That is what a good whip does. Every day, even on your side, a good whip phones from Australia to get members. It is wonderful.

Mr. Farnan: Mr. Kanter, as I have explained to him, is working through his purgatory. This is the purgatory, my friend, that all good cabinet ministers must go through before they get into the heaven of the cabinet. There is a certain suffering that must be endured. It is just like steel: unless you go through the fire you do not get that quality of steel. Mr. Kanter, as we have gone through the process of these hearings has indeed been hardened and has come out a tougher, and I think more valuable, member of the government. Certainly his performance on this committee should be commended to the Premier. He has been tough; he has shown an ability not to listen one iota to either the opposition members or the public.

1730

Mr. Chairman: Mr. Farnan, I would like you to get back to the motion at hand. It does not in any way, shape or form deal with Mr. Kanter.

Mr. Farnan: Okay. Let me zero right in on this issue. I want to talk about the idea of having the Solicitor General here for at least one sitting per week.

Mr. Ballinger: Thanks for reminding me what this is all about.

Mr. Farnan: I have been informed by Mrs. Cunningham that indeed the Solicitor General would want to be here. It is in the character of the representative, the Solicitor General, that she would want to be here. Is she a minister who would duck issues? I do not believe so. Not for one moment would I accept the fact that this Solicitor General would duck the tough issues of—

Mr. Campbell: Not the duck again.

Interjections

Mr. Campbell: She has already served in purgatory; she does not need to come back.

Mr. Farnan: I am finding it very difficult with the constant interjections that are being presented by the members of the government.

The Acting Chairman (Ms. Collins): The interjections are out of order. Mr. Farnan has the floor.

Mr. Farnan: I have to say, Madam Chairman, that I have also grown to

admire your abilities as we travel the province. Your decision right now confirms my judgement that you also have grown during this tour.

The Acting Chairman: If I were not a neutral chair, I would say I have found out just how diverse this province is. Carry on, Mr. Farnan.

Mr. Farnan: I have to say to you and to my honourable friends that I have a choice to make. The choice is this: I could say I will vote in favour of not having the Solicitor General here, and I put it to you that would be the wrong choice to make. Why should this committee deprive itself of the wisdom, the experience, the expertise and the commitment of the Solicitor General? It would be a wrong choice to make because we would be working without that support. As we all know, this is a co-operative venture in which both the government and the opposition parties are working as closely as we can until we can produce the best possible form of legislation for the province.

I could ask that the Solicitor General be here all of the time, but I am a reasonable man and my colleagues are reasonable men and women. Therefore, it would perhaps be asking too much to have the Solicitor General here all of the time, for all of the deliberations of this committee. Think of the burden that this would put on a busy minister who believes very much in a hands-on approach to her ministry, who is out in the field, who is working with different groups, who is trying to become conversant with all of the diverse issues within her ministry.

Mr. Runciman: Do you have pictures?

Mr. Farnan: I have to say it would be onerous indeed to request that the Solicitor General be here at all times. We are talking about Monday and Tuesday. Is that correct?

The Acting Chairman: The committee is scheduled to meet Mondays and Tuesdays.

Mr. Farnan: Can you imagine the kind of pressure that would put on a busy minister? To have to give up every Monday and Tuesday when there is so much to be done, with this minister being a hands-on minister, perhaps would be too much to ask. We look at the option in between. On the one hand, she appears not at all, which I think would be very insulting to the minister. I do not think even her own members would want that. Certainly, the opposition members would not support not having the minister here at all.

Mr. Ballinger: I know Mr. Philip wants you to filibuster, but I want to tell you, Mr. Farnan, this is getting just a tad ridiculous.

Mr. Farnan: Mr. Ballinger, you have to listen carefully to follow the argument.

On the other side of the coin, should she be here all of the time? Even Mr. Ballinger finds it difficult to be here all of the time, even with his dedication and commitment to the political process.

Mr. Ballinger: After listening to you today, I wonder.

Mr. Farnan: However, Mr. Ballinger, true to his commitment to represent his constituents faithfully and loyally, even when he is upset and perturbed, diligently comes to the committee and listens carefully as the

opposition presents its arguments.

Mr. Ballinger: The most nauseating arguments I have ever heard.

Mr. Farnan: I admire Mr. Ballinger for that. So we come to that middle ground. The middle ground for the Solicitor General—

Mr. Ballinger: Middle ground?

Mrs. Cunningham: For a Liberal.

The Acting Chairman: Mr. Farnan has the floor. Any interjections are out of order, Mr. Ballinger.

Mr. Farnan: —where the Solicitor General would be here for one sitting a week. Let us examine the benefits of that. The benefits, of course, are twofold, because there is indeed the line of communication going from the committee to the Solicitor General and equally there is the line of communication going from the Solicitor General back to the committee. We all understand that as we increase the quality of communication, so we increase the quality of the work we do in committee. As we take away from the quality of communication, naturally, we take away from the quality of the work.

Having the Solicitor General present just one day a week would send a very clear signal to the people of Ontario that the Solicitor General is actually interested in listening.

Mr. Ballinger: Do you know what would send a clear message to the people of Ontario? That you really are not interested in that; that all you are doing is wasting our time.

Mr. Farnan: Listening, Mr. Ballinger, is something one does not actually have; it is not inherent. It is something one has to learn.

Mr. Ballinger: It is very much inherent when somebody has something reasonably intelligent to say.

Mr. Farnan: Listening is a skill that can be developed. I believe there are certain books that have been written on this subject. I was in a Coles book store just the other day. I saw a book on the shelf which was called The Art of Listening.

Mr. Hampton: Just keep talking, Bill. That is what you are good at.

Mr. Farnan: I will attempt by tomorrow if possible—I cannot guarantee this, Mr. Ballinger—I will do my level best to see if I can find out who the author and publisher of that book are, because it is a book I believe you could read with a great deal of room for improvement within the whole area of your listening skills.

Mr. Ballinger: Thank you, Dr. Farnan, leader of the lecturers' association of Ontario.

Mr. Farnan: I have to apologize because at no time did I mean to lecture during the course of my presentation. I was trying to be as focused as I possibly could, relating to this issue. Before I was interrupted, when Mr. Ballinger interrupted me—I am just losing track because of these constant interjections—I believe I was talking about the advantage of having the

Solicitor General here and the message that would send to the people of Ontario.

As a result of what has happened up until now and because of the perception of the community that the Solicitor General is not prepared to listen—I have to be honest with you, my friends, in saying that is the reality out there, among the real people of Ontario—

Mr. Kanter: Behind the issue.

Mr. Farnan: Mr. Kanter knows the real people. They are the people who came before this committee, the ordinary men and women, retail workers and businessmen. These little people on several occasions came out very clearly and said to this committee: "Are we wasting our time? Are you guys really listening to us?" That was the impression the people of Ontario got, "Yes, we are wasting our time."

Mr. Ballinger: Yes, you are wasting our time.

1740

Mr. Farnan: Mr. Ballinger, I am going to draw an analogy for you that you may very well be upset about. I take it that you feel upset that I am wasting your time.

Mr. Ballinger: That is right. You have no more interest in what we are discussing.

Mr. Farnan: Mr. Ballinger, I have to say to you—

The Acting Chairman: Mr. Farnan, I would ask you to direct your comments to the motion.

Mr. Farnan: Thank you, Madam Chairman. I appreciate your bringing me back on track because, obviously, I did get diverted. I have to admit to you that I was slightly upset and perturbed by the continual interjections of Mr. Ballinger.

The Acting Chairman: I am going to ask all members of the committee to allow Mr. Farnan to continue and to minimize the interjections.

Mr. Farnan: Once again, Madam Chairman, your firm hand in controlling this agenda calls upon me to recognize the kind of quality of representation you bring for your constituents.

Mr. Ballinger: I gave up a good job for this?

Mr. Farnan: As I was saying, there was this tragedy of perception with regard to the Solicitor General. I think I can say with some confidence that both parties would want to do whatever they can perhaps to bring back, to whatever degree they can, confidence in the Solicitor General.

It is a sad state indeed when the people of Ontario begin to question the Solicitor General and begin to question whether she is really concerned. You get this question whether she is listening and whether she is interested in what is actually happening on this committee. The Solicitor General could overcome that perception, a negative perception in the eyes of the community, of the public, by appearing here.

The government members of this committee have a responsibility not just to the people of Ontario but to their colleague the Solicitor General. Certainly, Mr. Kanter does not want the public to perceive his minister negatively and Mr. Ballinger, I am sure, would not want the public to perceive his minister, the Solicitor General, negatively. That is something we all would hope to avoid, yet that is the reality: "Do these people really care? Do these people really listen?"

Mr. Ballinger: In whose eyes? Come on, get serious.

Mr. Farnan: My friends, there is one way we can do this. We can support—I am sorry, what is the writing, the motion of the member for Leeds—Grenville (Mr. Runciman). I am not sure, Madam Chairman; perhaps you could help me. Is this the motion as it was presented by the member for Leeds—Grenville?

Mr. Ballinger: With the greatest respect, Madam Chairman, he has been talking for 30 minutes and now he is asking if that is the motion he is speaking to. Give us a break.

The Acting Chairman : The chairman will answer the question.

Mr. Chairman: Well, who is the member who is speaking?

Mr. Ballinger: We are not certain.

Mr. Farnan: I am not sure if I have this correctly. I know the member for Leeds—Grenville put the motion on the floor. I am not sure if this was amended by someone else.

Mr. Chairman: No, he withdrew the first motion and put a new motion. That is a new motion you have before you.

Mr. Farnan: Okay, because I did want to commend the person who I had thought made an amendment but now I realize it was not an amendment to the member's motion, but indeed the member had the insight to present an alternate motion, which I think is superior to the original motion.

Interjection: You guys did not appreciate Ed when he was here.

Mr. Chairman: You have the floor.

Mr. Farnan: Since coming back from our tour of the province, I have had a lot of contact with the people of Cambridge. Now, I have to admit that I have generated some of the information or some of the contact, but some of it has been just basically meeting people at the market—

Mr. Chairman: I do not want to stop you, Mr. Farnan, but unless you are going to tell us that the people of Cambridge want the Solicitor General to attend our sittings once weekly—

Mr. Farnan: It is funny you should mention that, Mr. Chairman, because I met several individuals who said precisely that to me. In fact, I was just down at the market on Saturday morning. We have a very good farmers' market in Cambridge; it is a wonderful tourist event. It is well worth visiting Cambridge for our farmer's market, but many people go down and, as you know, at markets people tend to discuss the hot political issues of the day. I want to tell the government members that the attendance of the

Solicitor General at the committee hearings is an issue that is high on the minds of the people of Cambridge and that the people of Cambridge are very anxious indeed that the Solicitor General attend the committee hearings.

Mr. Ballinger: When was the last time you took that poll? You are about three months behind.

Mr. Farnan: Now, at this particular stage, I think the members of the committee will recognize that I am speaking in favour of the motion, that I support my colleague, the member for Leeds-Grenville. I would have to suggest that it is important that this motion pass unanimously. I want to talk about the importance of this unanimous motion, because sometimes people, when they look at a committee, some people think a committee is divided between the government members and the opposition members and that simply people are in here taking sides—

Mr. Ballinger: That is what you have been telling people all summer, in every town in Ontario.

Mr. Farnan:—and that maybe even partisanship can creep into the workings of a committee. I know differently, Mr. Chairman, based on the kind of leadership and example that you have given in terms of a nonpartisan approach to the whole proceedings. I know differently that people can come to committee and they can take an open and objective look at an issue.

Mr. Ballinger: So why don't you?

Mr. Farnan: So, as I wind up my remarks in support of my colleague, the member for Leeds-Grenville, I am going to be calling for that kind of unanimous support.

Interjections.

Mrs. Cunningham: Mr. Kanter was only speaking for himself when he made that observation.

Mr. Farnan: I am not sure about that. Let me say this, the people of Ontario as they sat before this committee, you will remember, asked, "Are you guys really listening?"

Mr. Ballinger: I wish David Reville were speaking.

Mr. Farnan: Very often they questioned whether the government members were free to vote independently or whether they were being dictated to by the government. Perhaps they were drawn to that kind of conclusion by the kind of directions that the government members received. I never drew those conclusions, that the government members of this committee were anything less than independent. They sometimes act as though perhaps there is some pressure being put on them, but this is an opportunity for the opposition or the government members to support this particular motion.

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So I say to my colleagues, assert that independence. Stand up and let your constituents back home see the kind of tough, strong stand that you are capable of. Let your constituents see that they elected a member to parliament who is prepared to say to the Solicitor General: "We are not going to deprive you, Solicitor General, of the opportunity to appear before this committee. In

fact, not only will we not deprive you, we will encourage you because we realize that your presence here will indeed add substance."

There is just one other item I have to say before I conclude. That is, I want to comment on the very careful wording of this motion, that is, "at least one sitting per week." That was a very carefully constructed, very carefully crafted phrase because I think what it does is add balance.

Thanks for the glass of water. This, I would say, is another indication of the kind of collegiality that can exist on a committee where people work together, respecting each other. I toast the honourable member from Sudbury (Mr. Campbell) for his generosity, thoughtfulness and kindness.

The honourable member for Leeds-Grenville (Mr. Runciman) has a tremendous ability with words. He has demonstrated this in the House on innumerable occasions. He is a craftsman with the use of words. As we can see in the motion that was put before us, it is one that has a very careful nuance. I congratulate the member. It is a motion that because of its careful wording, I am able to bring myself to support. When I look at that very carefully constructed phrase "at least one sitting per week," I can see that here is the kind of balance and thoughtfulness that just might make this motion successful.

If the member for Leeds-Grenville had been less sensitive, he may have been more absolute in the manner in which he presented this motion. A testimony to the sensitivity of the member for Leeds-Grenville is the fact that he was able to show a sensitivity to the Solicitor General to say: "Yes, Madam Minister, we respect you. We respect the expertise you can bring to this committee. But on the other hand, Madam Minister, we also recognize the fact that you are a hands-on minister and therefore, you may not be able to be here on every occasion." Should we, indeed, expect total presence by the Solicitor General at every meeting? I do not think so.

It is with considerable amount of pride that I am able to add my name to that of my colleague from Leeds-Grenville.

Interjection.

Mr. Farnan: I am sorry. The riding that Mr. Pelissero represents is—

Interjection: St. Catharines-Brock.

Mr. Farnan: St. Catharines-Brock. Should I be repeating my argument for the member?

Mr. Chairman: No. Maybe I could interrupt for just a second. You were speaking so kindly of Mr. Runciman. The member will be required to come back again if we do not at least have a vote on this before six o'clock. It is one minute to six o'clock.

Mr. Farnan: Let me say the request is certainly a very polite request. It certainly is not demanding. There is no way that the opposition is taking a stance out of line with our small numbers. We have to recognize the fact that, indeed, we are small in number. Combined, we make up, I believe, 35 members, compared to that huge majority that the people of Ontario granted to the government back in 1987. So we are not, as you can see, demanding. Again, the sensitivity of the member for Leeds-Grenville is so obvious that there is not a demand that the Solicitor General (Mrs. Smith) come here.

You will notice in the wording it is that the committee "formally requests." If I were going to make an amendment, probably it would be "formally and humbly" request the presence of the Solicitor General.

I am hoping that because the request has been put in such a very sensitive manner that the Solicitor General herself will want to respond. Then the members of the committee would also want to unanimously come together and support this motion, that one for at least one sitting per week.

Now I have to make comment on the final section of this bill.

Mr. Chairman: Perhaps you would care to move adjournment of the debate, it being, I believe—who has a watch?

Mr. Farnan: I would be happy to go on. It depends on what the committee wants. I can move adjournment if you wish.

Mr. Chairman: It being 6 o'clock, perhaps you would care to move the adjournment of the debate.

Mr. Farnan: Certainly, Mr. Chairman. I am reluctant to move adjournment because there is so much more that has to be said on this particular important—

Mr. Chairman: Would you move adjournment?

Mr. Farnan: I will move adjournment.

The committee adjourned at 5:55 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Tuesday, October 25, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Hart, Christine E. (York East L) for Mr. McGuinty

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, October 25, 1988

The committee met at 3:45 p.m. in room 228.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Chairman: I recognize a quorum. Mr. Farnan, I think you had wrapped up, had you not?

Mr. Farnan: I just had some concluding comments to make. When I came to the committee yesterday, I was certainly somewhat taken aback by the fact that my colleagues expressed concern that my mascot was not with me. I did not bring the mascot because I thought it irritated the committee members. But having heard the outpouring of affection that took place yesterday, I decided to bring the mascot back today and I hope my colleagues are happy and pleased as a result.

I want to focus my remarks on the presence of the Solicitor General (Mrs. Smith) in our hearings on these grounds: the fact that we are going to project either a sense of open-mindedness or closed-mindedness.

Mr. Chairman: There will be no eating, drinking, smoking or snoring in this committee.

Mr. Farnan: I want to focus my attention and my few closing words today on the idea of open-mindedness and closed-mindedness. I start by taking the concept of closed-mindedness. Closed-mindedness can result from ignorance on the one hand or just sheer stubbornness on the other. Let me look at the basis of ignorance and apply it to the situation. I do not believe—

Mr. Chairman: I would like you to get back to the motion.

Mr. Farnan: Yes. The relevance of this is to the amount of knowledge the Solicitor General has, or maybe should have. That would be the relevance to the motion, actually arguing to the point that the Solicitor General's presence will give greater knowledge.

On the basis of ignorance, no one can claim that the Solicitor General is ignorant of the facts. I believe she has the facts but, unfortunately, her knowledge is limited. I suspect government members may argue that the Solicitor General has at her disposal various studies that have taken place, Canadian studies, studies of this issue in other provinces. She may have available a great deal of information as to the current situation in Ontario that prompted the government to embark on this particular course. Indeed the Solicitor General may have available to her the facts that take place in other jurisdictions. No doubt the Solicitor General also has available to her information provided to her by ministry officials.

Sometimes ministry officials will tell the minister what they think the

minister wants to hear. For example, if the minister has already indicated a preference of direction, there is a possibility, I would suggest, that some bureaucrats, some ministry officials may be tempted, for whatever reasons, to reinforce the already established views of the minister. It may be simply on the basis of promotion. I think we have all examined corporate structures sufficiently to realize that sometimes people will promote the views of their superior. It would be a tragedy if indeed this were happening.

The Solicitor General also is party to the briefings she receives from the parliamentary assistant, and no doubt this has taken place on an ongoing basis. I suspect that other government members of the committee have not had the same access to briefing the minister as the parliamentary assistant, but perhaps in caucus you have been able to get your collective views together for the parliamentary assistant to brief the minister.

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The tragedy of it is the same motivational factors that can affect bureaucrats can sometimes affect politicians. Sometimes promotional concerns may infringe upon the kinds of input one gives to one's superior. If one knows that one's superior is of a particular viewpoint and determined to work along a particularly defined area, one may indeed even change one's mind on a topic.

In fact, maybe the Solicitor General herself was concerned when one week she said this was the chicken way out and the next week became the defender of the legislation. I am wondering if perhaps the Solicitor General herself was not moved by the views being promoted by her immediate superior, in this case the Premier (Mr. Peterson).

The minister's view of the world is limited. She does not have the benefit of the full hearings, the impact of the full hearings of the committee. She may say she has read the briefs that have been presented. I somehow question that she has read the hundreds of briefs that have been presented, but let me stretch a point and suggest that maybe she has gone to that extraordinary length, although I would think that probably the sense of what was presented at the hearings was passed on to the minister by the parliamentary assistant.

Even granted that the minister had read all the briefs, you miss out on a lot. You miss out on the nuance, the tone, the intonation, the visuals of the actual occasion. Certainly, it is beyond any shadow of doubt that the Solicitor General has not had the benefit of my experience on the committee. I have not had the opportunity to give the Solicitor General the full input of the insights I gained as I travelled the province.

On the one occasion the Solicitor General was here, as I pointed out, I was limited by the chair and my good colleague, who was then the assistant chairperson to this committee—

Mr. Chairman: I am giving you great latitude, and the rules allow you great latitude, but you are reiterating exactly some of the things you said yesterday.

Mr. Farnan: Let me move on to new ground then.

Mr. Chairman: I would like that.

Mr. Farnan: Given that the Solicitor General has not had the benefit

of the input of my colleagues the member for London North (Mrs. Cunningham), the member for Durham East (Mr. Cureatz), the member for Rainy River (Mr. Hampton) and myself, all the opposition members, we come to the conclusion—and this is very important and very significant in the argument I present to you this afternoon—that the Solicitor General has limited information.

I want you to bear the impact of this and I want you to bear with me on a couple of remarks, because they are extremely relevant. As a lawyer, you will understand, Mr. Chairman, that when a judge is making a judgement in terms of a person's guilt there are certain criteria that are evaluated. From my own background, I can tell you that when one looked at a personal misdemeanor or crime in one's life, and within theological terms we might call it a sin, one evaluated the implications of a particular action on these grounds: Did the individual have free will, did he have full knowledge and did he give full consent?

In looking at this particular issue, I am not going to belabour the areas of whether there is free will and full consent. I am not going to suggest that the government members of this committee do not have free will. I cannot make that decision for them. I cannot argue the case of full consent either. But I can argue the case of full knowledge. The reality of the matter, as I have pointed out, is that the position of the minister is constrained by the fact that she has limited knowledge of the hearings that took place; it is limited in that manner. The input to the Solicitor General has been totally one-sided.

We went out to hear from the people of Ontario and they spoke in a very clear and unequivocal voice. Yet when we came back, the major input in terms of the Solicitor General's education as to what took place on those hearings was provided solely by the parliamentary assistant and maybe by members of the government in casual conversation; but certainly there has been no opportunity for opposition members to have a dialogue with the Solicitor General.

The only way the Solicitor General can have full knowledge of the proceedings of what took place across Ontario has to be if she is available to hear from opposition members as well as from government members how we perceive the people of Ontario to be speaking.

It comes down to the motion of formally requesting the presence of the Solicitor General for at least one sitting per week during the duration of these deliberations on Bill 113. I put it to you that there is much that has to be addressed as we go through this bill. We still have to look closely at the municipal option, the closing on alternative days to Sundays, leasing in malls and areas of enforcement and fines.

In fact, I suggest it is not too late for the Solicitor General to attend this committee on a once-a-week basis and still be able to retain the substance of our collective insights, rather than simply the insights of the government members.

On an aside, I would say to—I am not sure—the member for Oxford, I think it is, Mr. Ballinger.

Mr. Ballinger: Durham-York.

Mr. Farnan: Sorry?

Mr. Ballinger: Durham-York.

Mr. Farnan: My apologies to the member for Durham-York. I did bring some books here on active listening. Are you listening? Total Recall and the Executive Desk Book.

Mr. Chairman: That is all very interesting, Mr. Farnan, but I regret to say that it bears a very thin resemblance to the motion that is before us.

Mr. Ballinger: When you have something intelligent to say, I will listen.

Mrs. Cunningham: He should be commended; he followed through.

Mr. Chairman: I thought you were ready to wrap up.

Mr. Farnan: My apologies, Mr. Chairman. There are a couple of particularly important points here, relevant to the Solicitor General, I might add, that might be useful.

Mr. Ballinger: Why did you not bring the whole library, Mike, instead of stretching out—

Mr. Farnan: These sections, wherever Mr. Ballinger, the member for—

Mr. Ballinger: You talk about listening, but you do not listen. I have told you three times my riding is Durham-York.

Mr. Farnan: The member for Durham-York. Okay. "On becoming a good listener: Avoid distractions."

Mrs. Cunningham: Do the people of Durham-York know that your riding is Durham-York?

Mr. Ballinger: Yes.

Mrs. Cunningham: Good.

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Mr. Farnan: There is another section on not arguing, and a good tip is to make notes.

I think the section for the Solicitor General is quite relevant here. This is a book called Are You Listening? and one of the chapters is entitled "If Only Someone Would Listen." I think that is very relevant to the Solicitor General. I think it is very relevant to all the remarks I have made both yesterday and today. The people of Ontario frequently said to us: "I would encourage you to rethink these bills. Are you listening?" There was this constant refrain as people wound up: "I hope you're listening. I hope I'm not wasting my time."

Mr. Chairman: Mr. Farnan, what does that have to do with the motion before us?

Mr. Farnan: The motion before us is this: The question is, who listens?

We all know I worked in the prison system for a while and I can tell you quite clearly that the prisoners knew who held the power. They could go to a

prison guard, for example, and they could be nice and con a prison guard, but let me tell you, the prisoners and the inmates quickly realized that the people who hold the power are the people who turn the key and let you out of the jail. It is not the prison guard, it is the Minister of Correctional Services.

In this particular case, when the people of Ontario say, "Are you listening?" the person they want to listen is the Solicitor General. She is the person in this particular case who has the power, together with the Premier, to facilitate a change of position on the part of the government.

I think my point at this stage is very relevant. The people of Ontario have come to the conclusion that, as a collectivity, the governing party has acted in something of an extraordinary, uniform manner. It is not surprising that people say: "Isn't there even one member of the government, isn't there even one backbencher who disagrees with the manner in which the government is acting on Sunday work?"

Mrs. Cunningham: I think Mr. Chiarelli does, deep in his heart.

Mr. Farnan: We say yes, there is, but you know, when they say, "But they're not standing up and speaking out on this issue," they point to your briefing notes and they say—

Mrs. Cunningham: They are starting to read petitions in the House. Have you noticed?

Mr. Farnan: They look at the briefing notes, and your briefing notes, as all the government members here well know, tell you what you are to say in answer particular questions. They tell you what speech—

Mr. Ballinger: Oh, come on, Mike. You have recited that in every town in Ontario. It is getting a bit much.

Mr. Farnan: Let me see what chapter that is. Perhaps if I pass this book over, Mr. Ballinger, you might be able to learn something in the process, rather than just shouting interjections.

The briefing book does indeed tell you the speech you should give when you go out publicly, and it even goes so far as to draft a letter for you, so this is the letter that you must send out to a constituent who writes in on the question of Sunday work.

The question is very relevant: Who is listening? The people of Ontario understand very clearly that their ordinary backbench member is not the individual who is going to turn this around. I can tell you—and I regret to say this because I have grown to have great affection for you as individuals; I have grown very much to like you as persons—however, I have to remind you—

Interjections.

Mr. Farnan: Another interesting area here would be some questions to decide: "Are you listening? Do you tend to squirm or fidget while others are speaking? Do you fail to listen for feelings or emotional content as well as for sense?"

Mr. Ballinger: With the greatest respect, we understand the exercise that our good friend from Cambridge is going through, but is he is going to recite chapter and verse?

Mrs. Cunningham: Don't be such an old twitch.

Mr. Ballinger: I have a comment for you, honey, but I will save it for later. With the greatest respect, if he is going to do this chapter and verse out of the book, I mean it is getting a little bit much, Mr. Farnan.

Mr. Farnan: And finally, "Are you quick to label a conversation or a speaker dull or boring? These are all indicators of an individual who has not learned the art of active listening."

Mr. Chiarelli: What has that got to do with Bill 113 or the motion that is on the floor? Speak to the motion.

Mr. Farnan: As I was saying, it disturbs me when I hear negative assessments being made by members of the public about some of my colleagues, whom I respect very much. I mean this with no disrespect. Individuals have asked me, "Aren't the government members simply performing seals?" and I said—

Mr. Ballinger: I would have thought that's exactly what you're doing. Ed's pulling the strings—

Mr. Farnan: I would hope not. Is there not any one of the government backbenchers who will reflect the views of their constituents on this important issue and not be bullied into simply toeing the party line?

I have to say it is important who is listening. It is important that the Premier listen to the people of Ontario. It is vitally important that the Solicitor General listen to the people of Ontario. The only possible way—and I congratulate the member for Durham East in bringing forward this legislation because the substance of the bill and much of the detail of the bill have yet to be discussed, including the presence of the Solicitor General, even for three hours a week.

You know, retail workers are going to be working more than three hours every Sunday. So for the next I do not know how many weeks, this government is going to permit discussion on the bill to take place. I realize that you have your agenda, your timetable. You are going to press forward despite the quality of the dialogue and the discussion that is taking place in committee. I realize that at some stage the government is going to, in its hurry, want to move forward more rapidly.

If I have any criticism of my colleague's bill I will make it now. When I look at the bill I ask, "Do you request the presence of the Solicitor General for at least one sitting per week during the deliberations on Bill 113?" I really do not have any problems, as I have explained, with the amount of time that the Solicitor General should be here.

But I do want to speak in terms of the distinction that we should draw between being merely physically present and being co-operative and actively listening. I think that is very relevant. It would be possible with this bill to have the Solicitor General here in body, but in reality her mind could be elsewhere. It would be possible to have the Solicitor General sitting here and protected by the chair. It happened in the past, I remind you, and that is very discouraging, but it would be possible.

I would like to point out in the area of co-operative listening—and this is the type of listening that I would want from the Solicitor General if she was present at our deliberations—that co-operative listening implies the following: It implies that there are shared insights; it implies that you

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Mr. Chairman: Mr. Farnan, I am going to interrupt again, because you are supposing that the Solicitor General will be here. The motion we are debating is that she come. How can you talk about listening, until we have dealt with the motion of whether she comes or does not come? You are not on the topic.

Mr. Farnan: That is a very good point, Mr. Chairman; however, I would beg to differ from you on this basis. I was putting forward my argument on the basis that there is an area of the motion with which I disagree, that is, the manner in which the Solicitor General is here. I may have to vote with the government members as a result of arguing this particular part of the argument.

I do believe we have to develop a climate of trust and a climate of co-operation. We have to develop—and I know you agree with me, Mr. Chairman. You are nodding your head.

Mr. Ballinger: He is nodding off.

Mr. Farnan: We have to develop a partnership in working towards the best possible legislation that we can bring forward and recommend to the House. I admire the Solicitor General so immensely and realize that she can be an asset to this committee, but it has to be in a shared manner. It has to be not that she just brings her expertise, which I again suggest is no small contribution, but also that she has to be prepared in all humility to listen to what the lowly opposition members have to say.

I finally have to go back to my mascot and the slogan that is written on it: "I'm not deaf. I'm just ignoring you." Again, I am talking about perception here, because I know the government and the Solicitor General would not want to willingly give off the impression that they were ignoring the people of Ontario; so I have to speak in terms of perception.

What are the people who came before the committee, hundreds of individuals representing hundreds of thousands of people, to think? They spoke with a uniform voice. They said, "Please stop," and now they are watching intently. I am sure the eyes of the province are on this committee as we make this deliberation, and especially this motion, which I am sure will have tremendous significance across the province. People will be wondering: Will the Solicitor General respond to the request of the committee to be present?

Mr. Chairman: Could I interrupt? In fairness to you, I am not sure that you were here when the Solicitor General did appear. The reason Mr. Runciman withdrew his original motion was that he recognized that, although three days were committed to the Solicitor General being here, she indicated she could not be here on a regular basis but she would be available to us at any time. I do not know whether you heard that or not.

Mr. Farnan: Well now, Mr. Chairman, I am glad you brought that to my attention. I am certainly pleased that the Solicitor General has said she can be here and that the Solicitor General would respond to this invitation.

What I do not want to see happen and what I think would be extremely unfair is if the government members were to actually pre-empt the Solicitor General in deciding whether or not she would respond to the invitation to be here. It would be a real tragedy if the majority of the government members on

this committee were to vote down this invitation because this invitation is not a demand that the Solicitor General be present.

This is exactly what it says. It is an invitation which formally requests the presence of the Solicitor General. It is quite acceptable for all of the government members to support this motion and for the Solicitor General, even at that stage, to say, "Look, it isn't possible for me to be there one afternoon a week."

I do not believe for one minute that the Solicitor General, knowing how important this legislation is and how significant it is to retail workers, to the people of Ontario, to the church groups, to the labour unions and to individual retail workers, would refuse this invitation.

It is with those few remarks that I would finally like to say there are a couple of quotes that I would like to make. This is a quote taken from the St. Catharines and District Labour Council. After a very excellent brief it says, "We urge you to listen to ourselves, the People for Sunday Association, the Coalition Against Open Sunday Shopping, the small business people who are the backbone of this great province, the churches, large businesses who understand the impact of this issue and many issues."

In another brief submitted by the Brantford Save Our Sundays Committee, it says, "Despite the emotional rhetoric of the likes of Mr. Kanter and despite the exact same canned speeches and letters from the Liberal backbenchers to constituents..." You see, the perception is that it is the same canned responses. I think the only thing that can remove that perception is for the Solicitor General to say: "Look, the game isn't over yet. I'm prepared to listen to the arguments."

That would help to remove the impression that exists out there among the people of Ontario. Let me remind the committee and all Liberal MPPs that if the local option becomes law, we will not forgive and we certainly will not forget.

The United Food and Commercial Workers—I think all these groups, to some extent, might be able to accept the final judgement in passing the legislation if indeed they feel due process has been served. Without the Solicitor General's presence to hear the input from the opposition members, I do not think due process is served. With those final words I will conclude my remarks.

Mr. Chairman: Thank you very much. You caught me by surprise. I think we have had ample discussion on this, have we not?

Mr. Chiarelli: I just have one brief remark. In view of the fact that it seems to be the order of the day to read liberally from textbooks, I have one in front of me now which I would like to refer to. It is called The Giant Book of Insults by Louis A. Safian. I would like the direction of the chairman as to what particular chapter we might be able to read from in terms of bores, chatterboxes, crabs, dumb-bells, meanies, pessimists, sad sacks and screwballs.

Mr. Chairman: The direction of the chairman would be that it is out of order. I think we are ready to vote on this matter. I gather that Mr. Runciman has consented that we vote in his absence. I think that was what the clerk indicated to me. Is that right?

Mrs. Cunningham: Mr. Runciman said we could proceed with his motion.

Mr. Chairman: Okay.

Mrs. Cunningham: It is up to you whether you want to vote or not.

Mr. Farnan: Shall we call our colleagues for the vote? Will we have a five-minute recess?

Mr. Chairman: Five minutes; all right. We will recess until 4:25 p.m.

The committee recessed at 4:19 p.m.

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Mr. Chairman: Do you have an amendment?

Mrs. Cunningham: No, I just have to make a point, I guess. I do not have Mr. Runciman's permission to say it is okay to call his vote.

Mr. Chairman: Well, I think we had a—

Mrs. Cunningham: I do not know what the procedural stuff is but we cannot find him.

Mr. Chairman: I thought we had an agreement at the outset.

Mrs. Cunningham: However you want to handle it. I am just telling you I would not want to be on record as saying I have his permission, because I do not. Mr. Cureatz, who was prepared to speak to this, is in the House speaking.

Mr. Chairman: We will all be old and grey waiting for Sam.

Mrs. Cunningham: I do not know whether you want to stand it down or what.

Mr. Chairman: We will stand down Mr. Runciman's motion. We will proceed back to the motion that was before us, which was moved by Mr. Hampton.

Mr. Kanter: On a point of order, Mr. Chairman: Is it not the responsibility of the mover to be here when his motion is being debated and likely to come to a vote? Is that not the responsibility of the person?

Mr. Chairman: If you wish to move the vote, Mr. Kanter, by all means go ahead. I am not going to call it. We can vote but—

Mr. Kanter: I am going to move that we consider this. We have had a very extensive debate on this matter and I move that we vote on Mr. Runciman's motion.

Mr. Chairman: Okay, a request has been made to call the question. The question is in process.

Mr. Farnan: Can I speak to that?

Mr. Chairman: No, once the question has been called, there is no

further debate on the issue. The question has been called. Those in favour of Mr. Runciman's motion, please signify. Those opposed? The motion is defeated.

Mrs. Cunningham: Mr. Chiarelli did not vote.

Mr. Chairman: No one asked for a recorded vote.

Mrs. Cunningham: Well, he still has to vote.

Mr. Chiarelli: You saw my hand go up.

Mr. Chairman: I thought you voted.

Mrs. Cunningham: That was after the vote.

Mr. Farnan: I think the vote should be taken again.

Mrs. Cunningham: Take it again.

Mr. Chairman: Okay. Those in favour of Mr. Runciman's—

Mr. Farnan: Can we have a recorded vote, please, Mr. Chairman.

Mr. Chairman: Well, not without unanimous consent because we have already called the vote and this is a recall. The clerk tells me we can; a recorded vote.

The committee divided on Mr. Runciman's motion, which was negatived on the following vote:

Ayes

Cunningham, Farnan, Hampton.

Nays

Chiarelli, Collins, Hart, Kanter, Sola.

Ayes 3; nays 5.

Mr. Chairman: We return to the amendment that was stood down pending discussion of Mr. Runciman's motion. I will read it again just for clarification.

Mr. Hampton has moved that subsection 4(6) of the act, as set out in the government motion, be struck out and the following substituted therefor:

"(6) If the council adopts a plan, it shall ensure that the plan is made available to the public by publishing it in three consecutive issues of a newspaper having general circulation in the municipality."

I think we have had some discussion on this. Is there any further discussion?

Mr. Hampton: As some of the members of the committee were not here at that time, I would like to make the comments I originally made.

Mr. Chairman: I will not let you do that because that would be contrary to the standing orders. You cannot be repetitious.

Mr. Hampton: In addition, you will recall that my comments were limited, as we agreed when I introduced this motion that we were going to stand it down in order that we could deal with Mr. Runciman's motion, so I have not completed what I was going to say.

Mr. Chairman: All right, you can go on as long as it is not repetitious.

Mr. Hampton: Thank you for that advice, Mr. Chairman.

Mr. Kanter: It is the rule, not advice.

Mr. Hampton: As I indicated when I introduced this amendment to section 4 of the bill, if notice is to be effective and to be received by those we want to have receive notice and those we want the notice to come to the attention of, it is be my view that simply printing it in a local newspaper having general circulation in the municipality on one occasion only is simply not sufficient.

1640

I used an example the other day when I introduced the amendment. I can cite numerous other examples, but the example I used the other day was one that transpired only last spring. It was an example where the Ministry of Labour wanted public input on certain aspects of the Workers' Compensation Board and how it was functioning. They printed notices of meetings in only two newspapers and on only one occasion, and they were very surprised when they had no groups and no interested organizations phoning or writing, asking to appear before the investigatory committee.

A couple of MPPs intervened and said, "If you really want to reach your audience, bearing in mind that many of these people are busy at work for at least 10 hours a day, if not 12 hours or more, you're going to have to advertise more frequently than you have if you hope to reach your target audience."

They did that, and lo and behold, received an overwhelming response to the advertisements and received a response from all sides. In other words, it was not just one interest group that appeared; it was a number of interest groups that appeared to take part in the debate and offer a fair amount of relevant input on the subject in question.

For those who have had some municipal experience, I think there is the realization that if you want effective public input or if you want the public to know very soon what is happening on a given issue and you want it to receive effective notice, in many cases, in terms of municipalities, notices are indeed published more than once in a local newspaper having general circulation.

The intent of the bill seems to be to place now some of these measures within the realm of municipal councils, yet if I read properly the government's own amendment, the government seems to want to ensure that effective notice procedures are carried out. In other words, it is not a total capitulation to the municipalities by the province; it is capitulation with some notice requirements and with some restrictions on it. If I read the

government's own intention in its section 4 amendment, the government seems to be saying that there has to be some provision for notice, some provision for bringing the process and the events to the attention of the interested public.

If that is the case, I would argue that if you are sincerely interested in bringing this to the attention of the publics that may be interested, then the bill should specify publication on more than one occasion. I would argue that at least three would be more effective notice and more assurance that the notice is being received. For that reason, I have offered this amendment.

As I say, I do not think it would be a burden financially for a municipality in these sorts of situations. Where it might become a financial burden is if a municipal council is hit with applications in terms of Sunday shopping bylaws at almost every municipal council meeting, in which case the government would have to admit that we are right in our submissions that opening up Sunday shopping bylaws to municipalities is indeed opening up a hornets' nest. I think the government would then have to take notice of what some of the groups who have appeared before this committee have said.

Basically, a lot of municipalities do regard it as a very difficult situation, a situation where municipalities very likely will be inundated with applications for special bylaws or for changes in bylaws permitting Sunday shopping. That would be the only way it would become onerous. The government has already said it does not believe this would happen. If the government does not believe it would happen, then I would say that requiring a municipality to give notice in three consecutive issues of a newspaper having general circulation in the municipality would not be a heavy financial burden for a municipal council that is involved.

To summarize, I would say that the amendment speaks to ensuring effective notice to the publics who may be interested. Second, if there is some concern about the financial burden on the municipalities which might be involved, the government has already taken the position it does not believe that once this responsibility is placed in the hands of municipal councils, those councils will be inundated with applications from every sort of commercial interest group for a change in bylaws.

Again, I do not think there will be any great financial burden on the municipal councils that might be affected by this. I think it would ensure that effective notice will be received by the publics who are or ought to be interested in what might be going on in terms of Sunday shopping bylaws. Therefore, I would recommend to the Liberal members of the committee that they consider the merits of this proposed amendment and consider voting for it for a change.

Mr. Farnan: I want to congratulate the member for Rainy River for bringing forward this excellent motion. There is probably no member in the House who is more consistently protective of constituents' rights than my colleague from Rainy River. His concern for the rights of citizens is amply enshrined in the motion he has put forward for our consideration.

I support the bill. Excuse me, I support the motion. Is that right, or is it an amendment? Which is it?

Mr. Ballinger: That is fine. The only extraction I am going to take out of Hansard is that you said you supported the bill.

Mr. Farnan: I support this particular motion. I have to support this

in the sense that it goes part of the way. I see additional areas that may have to be added to it, but I think this is a good start. I have to look at areas, for example, where the newspaper is not distributed throughout a particular riding or municipality and there is a lack of communication. I would even make a suggestion to the committee that perhaps we would want to receive some consulting advice from advertising consultants as to the most efficacious way to communicate with people when a change is possible within a particular municipality. I am wondering whether a municipality should not be obligated to have written notice hand-delivered to every resident of the municipality if there is a change.

1650

Mr. Chairman: The motion you are addressing is Mr. Hampton's motion. If you choose to make that one afterwards, that is up to you, but at the moment, you are discussing the motion.

Mr. Farnan: Yes, and speaking in support of it, I realize that it goes a long way towards achieving—

Mr. Ballinger: You guys should be in the House. You are missing all the real action. It is in the House, not here listening to you guys.

Mr. Farnan: The name of this book, Mr. Ballinger, is the Executive Deskbook, by Auren Uris, and it is published by Van Nostrand Reinhold. I think you will find that very valuable. It will save you from a lot of interjections and will help you to maintain the respect of your colleagues, if you can follow even part of the advice that is given here; and Are You Listening?, McGraw-Hill book company.

Mr. Chairman: Let us get back to the issue.

Mr. Farnan: I would certainly love to, but it is very discouraging indeed when one is consistently interrupted. I am happy to say this is not typical of my government colleagues on the committee. It is something that is unique to Mr. Ballinger.

Mr. Ballinger: Yesterday you said we were wonderful. You cannot make up your mind.

Mr. Farnan: I do agree that I have been very impressed with the co-operative spirit of the majority of members on this committee. It really is important that we co-operate and work as a team. Basically, Mr. Ballinger, the type of interjections—

Mr. Ballinger: Get serious about the issue, then, and quit fooling around.

Mr. Chairman: Mr. Ballinger, Mr. Farnan has the floor.

Mr. Ballinger: Even with twenty minutes' worth of fresh air, I come back and he is still the same.

Mr. Farnan: Of course, it is very difficult for somebody who has been absent and missed the substance of what I was saying to just come in and interject without knowing—

Mrs. Cunningham: Did you go into the House for fresh air—

Interjections.

Mr. Chairman: As a practical matter, it is going to be impossible for Hansard to capture all these pearls of wisdom that have been dropped here, so maybe we could just have one speaker at a time. Mr. Farnan, continue, and no interjections, please.

Mr. Farnan: I thank you for your firm handling of the committee. It is only with the kind of leadership that you are giving to this committee that we can indeed get on with the process.

Mrs. Cunningham: You are in trouble again, Mr. Chairman.

Mr. Chairman: The job is up for grabs.

Mr. Farnan: To come back to the motion, I think the emphasis in this motion is the word "ensure." I do not think, when a change of significance is taking place within the community—and this indeed is a change of significance when we are talking about individuals who are working on Sundays; it is a change of significance when families' lives are going to be affected; it is a change of significance when children and parents are going to be separated as a result of this type of legislation. So the word "ensure," I can say quite confidently, is a well-chosen word by my colleague, the member for Rainy River (Mr. Hampton), who has a great ability in terms of capturing precisely his meaning as to what he wants to take place.

My colleague from Rainy River does not want to leave to chance the fact that the residents of a particular municipality may or may not know what is happening. We are all only too familiar with the situation at the municipal level where something is passed, it appears in the local newspaper and the reaction of the community is, "My goodness, I did not know that was taking place." Of course, people are upset and, unfortunately, they do not have the opportunity for local input. What is the point, I ask my honourable colleagues, of talking about local responsibility if we do not have local information?

Mr. Ballinger: I can see now why you left teaching. It must have been awfully frustrating for the students. No wonder every kid in your class flunked.

Mr. Farnan: As I was saying, responsibility—

Mr. Chairman: Was somebody in your class?

Interjection: It is getting very late in the day—

Mr. Chairman: I am sorry. Go ahead, Mr. Farnan.

Mrs. Cunningham: He taught elementary school. He did not teach kindergarten.

Mr. Chairman: I should not interject.

Mr. Ballinger: Just think, for 100 votes we could have had Claudette Millar.

Mr. Chairman: Go ahead, Claudette. Are you all right, Mr. Farnan? You are coughing. Perhaps you would like a few hours to—

Interjections.

Mr. Chiarelli: Just bring in the oxygen.

Mr. Farnan: I want to come back to this whole concept of ensuring participation because the democratic process works best with full information and full knowledge. It is like everything else; as we decrease the information available to constituents, as we decrease our awareness, then the democratic process itself becomes flawed. While you, as a government, may want to wash your hands of the tough decisions about Sunday shopping in municipalities and pass that on to the local governments that have clearly told you they do not want it, certainly we do not want to create a situation in which the local government can be criticized for handling the process in a manner that could be viewed as less than perfect by the population.

Mr. Ballinger: You guys are just puppets over there.

Mr. Hampton: We have our own puppet here.

Mr. Ballinger: Ed Philip's puppets.

Interjections.

Mr. Chairman: Go ahead, Mr. Farnan.

Mr. Farnan: One way of ensuring the most effective democracy is by having informed citizens. We can ensure this by guaranteeing that every citizen will be made aware of any change in the Sunday work laws which will affect his or her municipality. We have here a motion that simply says to publish it in three consecutive issues of a newspaper having general circulation in the municipality. I think the idea of having it in three consecutive issues makes a lot of sense. We would not want to stagger it over a longer period. I think we would say, that if we know the council meeting is going to be on a certain day, that it would be perhaps—not the three weeks immediately prior, I do not think. Perhaps there might be a pause in between.

When people have seen the notice, they then have time to prepare and marshal their arguments because very often, as you well know yourself, if you hear that an issue is being discussed the next night after you read an advertisement—and I have often found this myself to be very frustrating—an issue is coming before council, you just read it on the Friday before the council meeting and you think: "My goodness, if I had only had a few weeks in which to prepare my arguments, I could have done a lot more research. I could have brought forward stronger arguments. I could indeed have developed a lobby group."

Mr. Chiarelli: Good point.

Mr. Farnan: "I could have ensured that a lot of people came to council in support of the particular position that I wanted to endorse." So the idea of having it in three consecutive weeks is a good idea. It rules out the possibility that if it just appears the one week, it could be missed by individuals who could be key players in the discussion.

On the area of financial burden, I appreciate Mr. Chiarelli's continued

endorsement of my views; I appreciate that very much. As I have travelled the province, and I suspect that as we have grown to know each other and respect each other's viewpoints, I can see a lot of growth on the part of Mr. Chiarelli; that he is taking positions now he would not have taken perhaps five or six weeks ago or even three months ago.

1700

Mr. Chairman: I am sure Mr. Chiarelli's wife will be pleased to read these accolades in Hansard. But let's get back to the motion, Mr. Farnan.

Interjections.

Mr. Chiarelli: Mr. Farnan is going to get a complex. He thinks we are ignoring him.

Mr. Farnan: I have total confidence in the chairman. He has demonstrated to me time and time again the ability to bring even the most unruly members to order. So when the chair decides, I will continue.

Mr. Chairman: You may continue, Mr. Farnan. Not for too long.

Mr. Farnan: Let me say once more that it is with pleasure that I speak in favour of this particular motion mainly to support a colleague who has demonstrated, not just on this issue but on many issues, a commitment to the residents of Rainy River and to the people of Ontario that he is there to protect the rights of individual citizens to ensure that legislation, no matter at which level, the municipal or provincial level, does not pass without their full knowledge.

Of course, as a party and as the official opposition in Ontario, New Democrats have always been there to fight for ordinary people to ensure that their rights are protected.

Mr. Ballinger: You think you are the only group that speaks for the ordinary people?

Mr. Chairman: I think Mr. Farnan was wrapping up and he has a few more words to say. So let's give him a chance to say them.

Mr. Farnan: As I was saying, the member for Rainy River is a model to all of us and certainly reflects the—

Mr. Ballinger: The ordinary member for Rainy River.

Mr. Farnan: As I was saying, the member for Rainy River has always—

Interjections.

Mr. Chairman: Mr. Farnan, are you just about finished?

Mr. Farnan: Indeed, I was. The member for Rainy River reflects the commitment of the New Democratic Party to fight for the rights of ordinary citizens at whatever level of government, whether it be municipal, provincial or federal, to guarantee that their rights and privileges are defended from corporate interest, as in cases where we know large businesses are the advocates of Sunday work legislation.

We regret that the government party has indeed embraced the interest of

the big business power brokers who are intent on making Sunday the same as any other day and, indeed, having legislation that would permit them to open seven days a week. The citizens of Ontario can have confidence in members, such as my colleague the member for Rainy River, who will do absolutely everything in their power—

Mr. Chairman: Are you moving a motion with reference to Mr. Hampton? You seem to be discussing him at great length.

Mr. Farnan: I only do that because it creates such anxiety among my government colleagues and I do not know for what reason. I think perhaps his reputation is such that it does not need to be repeated, but—

Mr. Chiarelli: You are going to have to hurry up, Mike, or I am going to have to bring my book out.

Mr. Farnan: I would like to join my colleague in ensuring that there is absolutely available to the public knowledge of any change in circumstance that would result in Sunday work within a municipality. I would hope that the Liberal members of this committee—indeed, I would hope that the government would support every motion that guarantees what the member is asking to have ensured, that public information has the support of the members of this committee unanimously.

Mr. Chiarelli: Good point, but I could not go for it.

Mr. Farnan: I invite Mr. Chiarelli and the other members on the committee to join the New Democrats and the Conservatives in protecting the rights of ordinary citizens.

Mr. Chairman: Thank you, Mr. Farnan. Are there any further speakers on the issue? Are you ready to vote?

Ms. Collins: Could I just ask a question, Mr. Chairman? You asked if there were further speakers.

Mr. Chairman: Do you really want to ask the question? The question has been called.

Clerk of the Committee: No, it has not.

Mr. Chairman: All right, go ahead.

Ms. Collins: I just want to know, when you talk about three consecutive issues of a newspaper, it does not say whether it is a daily newspaper, a weekly—

Mr. Farnan: It could be daily or weekly.

Ms. Collins: So it does not matter whether it is daily or weekly, or whether it is once a month?

Interjection: You would have to answer to the Association of Municipalities of Ontario for that.

Mr. Chairman: Okay, we have an answer to that.

Mr. Farnan: That is a really valid question, and it deserves an answer, Mr. Chairman.

Mr. Chairman: A request has been made to call the question.

Mr. Farnan: It says "a newspaper having general circulation," as opposed to a newspaper that may have limited circulation.

Mr. Chairman: Okay. The question has been called.

Interjection: An hour ago.

Mrs. Cunningham: Could the motion be re-read?

Mr. Chairman: Do you wish it read again?

Mrs. Cunningham: Yes.

Mr. Chairman: Mr. Hampton had moved—can we have a little quiet, a little respect for the chair?

Mr. Hampton moved that subsection 4(6) of the act, as set out in the government motion, be struck out and the following substituted therefor:

"(6) If the council adopts a plan, it shall ensure that the plan is made available to the public by publishing it in three consecutive issues of a newspaper having general circulation in the municipality."

Mr. Farnan: Recorded vote.

Mr. Chairman: I am sorry. Once the question has been—

Mrs. Cunningham: That's okay. Go ahead.

The committee divided on Mr. Hampton's motion, which was negatived on the following vote:

Ayes

Cunningham, Farnan, Hampton.

Nays

Ballinger, Chiarelli, Collins, Kanter.

Ayes 3; nays 4.

Mr. Hampton: After all that.

Mr. Chairman: Yes. We are now at Mr. Kanter's motion, which we have read. Are you ready to vote?

Mrs. Cunningham: Can you read it?

Mr. Chairman: All right. Mr. Kanter moves that section 4 of the act, as set out in section 4 of the bill, be amended by adding thereto the following subsections:

"(5) The council may establish a plan setting out the criteria to be considered by it in determining whether a bylaw should be passed under subsection (1).

"(6) If the council adopts a plan, it shall ensure that the plan is made available to the public by publishing it in a newspaper having general circulation in the municipality."

Are you ready to vote, members?

Mr. Farnan: Is there a debate on Mr. Kanter's motion?

Mr. Ballinger: How many times do you want to debate it?

Mr. Chairman: It has been debated.

Mr. Farnan: I would certainly like to have a copy of that motion. I do not have that in front of me.

Mr. Chairman: You should have a package of the motions.

Mr. Farnan: And I would certainly like an opportunity to debate it.

1710

Mrs. Cunningham: I have a request for some legal advice on a point which related to the section.

Mr. Chairman: It was not on that; it was on section 3. We stood that down to allow you to get that information.

Do you wish a recorded vote?

Mr. Farnan: No. I would like to debate it.

Mr. Ballinger: With the greatest respect, how many times are we going to debate the original motion?

Mr. Chairman: You were not here, Mr. Farnan.

Mr. Farnan: That is no reason why I cannot debate.

Mr. Ballinger: Do you expect me to sit here and listen to you until Christmas?

Mr. Farnan: Yes.

Mr. Chairman: I will let you debate it if you have anything new to add different from what you debated on Mr. Hampton's amendment. In fact, the only change was the number of times it would be circulated. You have gone through the word "ensure" in great depth—

Mr. Farnan: I will be very brief.

Mr. Chairman: I will take Mrs. Cunningham first, though.

Mrs. Cunningham: To Mr. Kanter, I have a question on this motion with regard to the council establishing this plan. We are talking about public hearings here as well. Is the intent correct? How does this relate to a municipality versus a regional municipality where a number of municipalities are involved? I would like you to speak to the intent of that. I had the question from the regional municipality of Niagara actually. How will it work?

Mr. Farnan: Good question.

Mr. Kanter: I believe the interpretation of "council" would be consistent with the rest of the legislation and the definition section of the legislation, where "municipality" means "a local municipality, other than a local municipality within a metropolitan, regional or district municipality or the county of Oxford," and in those cases means "a metropolitan, regional or district municipality." I think that meaning would be consistent with the meaning of "municipality" in the rest of the act. That would be my understanding of how it would operate.

Mrs. Cunningham: At the very beginning we were talking about what the Solicitor General really meant by "municipality," and I think we need some examples, at least two or three concise examples of how this would work. If you are looking at municipalities within a region, and we can go back to the regional municipality of Niagara, does each individual municipality come forth and make its own plan, and then go to the region, take the plans and debate these plans in some way before they publish them?

I really need to know some examples of how this would work and how this decision-making process will occur. Who will hold the public hearings? Will it be the region or will it be the district municipality?

Mr. Ballinger: The regional municipality is the only level—

Mrs. Cunningham: Is Mr. Ballinger answering? Because I would like the answer to that question: Who holds the public hearings and how does the process work? Could you describe it to me?

Mr. Kanter: My understanding is that we have completed and passed section 4, that is, with respect to the public hearings. I guess it would be the amendment to subsection 4(1a). With respect to the clause we are currently debating, with respect to the establishment of a plan and the publication of that plan, it would be my understanding that it is the regional council, in the case of the region of Niagara, to take the example Mrs. Cunningham suggested, which may establish a plan and, if it adopts such a plan, the regional council which would ensure that that plan is available to the public by publication.

That is my understanding. Certainly, Mrs. Cunningham might wish to call Mr. Spring, legal counsel, because she is asking essentially a legal question or a question of interpretation, but that would be my understanding of how the act would work and how this particular amendment would work.

Mrs. Cunningham: I really do need to hear how this will work, Mr. Chairman.

Mr. Chairman: Mr. Spring, would you come forward, please? Do you understand the question Mrs. Cunningham is asking?

Mr. Spring: Yes, I believe I do.

Mrs. Cunningham: It may be legal, but it is also a process question.

Mr. Chairman: I am only going to ask Mr. Spring to address it with reference to the legal question. If it is a policy matter, no.

Mr. Spring: I think the answer to Mrs. Cunningham's question lies in

the definition of "municipality" set out in section 1 of Bill 113. In that definition, "municipality" is defined, except for section 6, which is the grandfather bylaw section, as "a local municipality, other than a local municipality within a metropolitan, regional or district municipality or the county of Oxford," and the "metropolitan, regional or district municipality and the county of Oxford." Therefore, where there is a regional municipality or a district municipality or the county of Oxford or Metropolitan Toronto, it would be the responsibility of that level of government, if we may call it the upper tier—

Mr. Ballinger: It is the good part of the bill. That is what makes this bill work.

Mr. Spring: —to carry out the obligations imposed on it by the various subsections of section 4. They would be responsible for advertising. They would be responsible for conducting the hearings. In those parts of Ontario that have municipal organization without a regional or district or metropolitan government and also outside the county of Oxford, it would be the local municipality, for instance, the council for the city of London, Chatham, Thunder Bay, all of those other cities, towns, and villages that lie outside the metropolitan region or district municipalities and outside the county of Oxford.

Mrs. Cunningham: In the example of Welland then, where the municipality in fact—

Mr. Ballinger: You have been out knocking on doors in Welland, have you?

Mr. Chairman: Mr. Ballinger, Mrs. Cunningham is speaking.

Mrs. Cunningham: Is it the rule of the committee that we can eject certain people?

Mr. Chairman: We can name him very shortly.

Mrs. Cunningham: Actually, I have not been door-knocking in Welland, but I have in London.

Mr. Chairman: We do not want to know what you do in your private time. Go ahead.

Mrs. Cunningham: I thought Mr. Ballinger might have been interested.

Mr. Ballinger: I will speak to you later.

Mrs. Cunningham: This particular part of Hansard will be sent down to Welland, Mr. Ballinger, so I should warn you in advance that anything you may say could be held against you.

Mr. Chairman: I could think of more important places it could be sent.

Mrs. Cunningham: So could I.

In the example of Welland, though, they themselves did pass a motion of their local council. I was under the impression, quite frankly, that you would be most interested in having public hearings for that particular municipality

to define its own plan. Welland is very much into tourism right now and actually has a plan to create more tourism within the municipality and therefore to attract more visitors to the municipality. In fact, they may want to have their own public hearing on whether stores may be allowed to open to a greater degree than they already are in Welland. How will this particular legislation affect their local autonomy then, given the examples we are using, because that is what they do now?

Mr. Spring: In fact, in so far as Welland falls within the regional municipality of Niagara, it will be the responsibility of the regional municipality of Niagara to advertise the bylaw to conduct the public hearing. That is the statutory duty that will be imposed upon the regional municipality. There is no statutory duty that devolves upon the city of Welland under this legislation.

1720

Mrs. Cunningham: Given that that is exactly what happened with the present Retail Business Holidays Act, in that Welland did create its own plan and in fact did try to influence the regional municipality, what is different about this legislation—meaning Bill 113—and how it works, and the present legislation, which is working now. What is different about this amendment?

Mr. Ballinger: You finally got it. We have been telling you all along. There is no difference.

Mr. Chairman: Mr. Ballinger, I think maybe you would want to stay out of this.

Mrs. Cunningham: If there is no difference, as stated by Mr. Ballinger, then I do not understand why we even need the amendments, because this is exactly what is happening under the present Retail Business Holidays Act. Since this is a legal opinion that we are getting on this, I am trying to find out what is different and how it works. I am just wondering what the purpose of these amendments is at all.

Interjection.

Mrs. Cunningham: I know how it works now, and I am trying to find out what is different. No one has answered my question.

Mr. Kanter: I think that may possibly or properly be a question of policy and I would certainly be willing to answer Mrs. Cunningham's question. The solicitor may have preliminary comments as to a legal interpretation, whether it is different or not. If he has any further comments, he can certainly feel free—

Mrs. Cunningham: He may even be able to answer that question. Who knows?

Mr. Spring: This is the only comment I was going to make: You asked what is different. I can comment on what is different legally; the process question is another question that may not in fact be a legal question.

Mrs. Cunningham: The legal one I would be interested in.

Mr. Spring: Legally, the difference is that this bill will impose upon the regional municipality a duty to hold a public meeting in respect of a

proposed bylaw and to publish notice of that meeting in accordance with the terms of the amended section, whereas previously the municipality passing the bylaw, whether it be regional or local, was under no such duty.

Mrs. Cunningham: Okay. My next question is to Mr. Kanter. If the municipality, which we are just using as an example, followed a process that was not legislated—and this whole issue of public hearings is something which municipalities practise on a regular basis when they are looking at changes in bylaws—why does the government feel it necessary to become involved in the question of local autonomy to this extent?

My concern is this: Right now, the local municipality, meaning Welland, can hold its public hearings and can get input. People locally within that municipality, the taxpayers, are part of their own democratic process. With this legislation, they could still do that if they felt like it, but in fact, it is the duty now of the regional municipality to look at the results of public hearings which they legally must hold. I think this is an intrusion on local autonomy to an extent that this government should not be proud of and, more important, to the extent that it is not necessary. Nor do the local taxpayers want this kind of legislation. It is expensive and it is unnecessary. I would like Mr. Kanter to speak to that.

I think right now we have a more democratic process in that Welland and the regional municipality have public hearings. The whole process has worked without this intrusive legislation and this lack of respect for local autonomy.

Mr. Chairman: I do not want to interrupt you, but we are debating—

Mrs. Cunningham: It is important. We are debating public hearings and I need a clarification as to how the process works. I have just been enlightened by one of the responses, at least, from Mr. Spring. I would like to be even more enlightened with some kind of response from Mr. Kanter.

Mr. Chairman: There is no problem with that, but I thought you were falling off into some other areas. Mr. Kanter, would you like to answer that?

Mr. Kanter: Perhaps a general comment first with respect to the differences between this legislation and the previous legislation. I think Mr. Spring gave the legal interpretation. I agree with him completely. I want to say the same thing from a policy perspective.

The level of government which can regulate Sunday shopping has not changed. It was the regional government under the previous bill. It is the regional government under the current bill. What has changed is the degree of public participation, the extent to which people affected by these decisions have a legal right to a say rather than a council privilege, which might allow them a say in the section of the bill which we passed previously, which under the government amendment will give people the right to notice, the right to attend a public meeting, the right to speak out at that meeting on their views on this important issue.

I was quite surprised when both opposition parties voted against the right of people to be heard. However, that was their decision and that was their choice. The government's view is that people should be allowed to have a voice in this very important issue which may affect them, and they should have that voice in the region where they live, where it is obviously much easier to have access to the regional government than it is for people in the region of Niagara, for example, to have to come all the way back to Queen's Park.

With respect to the particular clause before us now, that of a plan, it is our view that regional councils should be encouraged or certainly it should be clearly pointed out to them that they have the option of looking at Sunday shopping in a planned way and looking at criteria. I know that various parts of the region of Niagara, for example, Niagara Falls, Port Dalhousie, Niagara-on-the-Lake and a number of parts of the region of Niagara have in the past established Sunday shopping or permitted Sunday shopping. Perhaps if Welland wants to allow Sunday shopping for tourism or indeed for other reasons, the regional council of Niagara has the option of looking at this issue in a whole sort of way, in establishing a plan, in setting out criteria, with respect to tourism or other reasons.

I would just emphasize, and I think it is fairly clear from the amendment, that it is an option. That is not something we are imposing on regional councils. It is an option. It might be a useful option for some regional municipalities. They might seize the opportunity. They might consider it a very useful exercise. Other local governments may choose not to exercise the option. I would hardly consider it an imposition on local autonomy but rather an addition to the power that regional councils or local councils might want to exercise.

Mrs. Cunningham: I do not think my question was answered. If you are saying that the level has not changed, and that is what you stated, I would suggest that during the hearings—through you, Mr. Chairman, to Mr. Kanter—you mentioned a number of times that the great amendment you were able to achieve in your own caucus was that it would be a regional responsibility. I do not know what you are talking about because it is a regional responsibility now. I do not understand why you made the statement that it is now with the region. I listened to that for some 10 weeks.

Mr. Ballinger: It was in response to their concerns about the domino effect.

Mrs. Cunningham: I would like you to clarify that. Mr. Chairman, through you to Mr. Kanter, I want it very clear in this debate down the road we will be having with members of the public. You stated that you have done a wonderful thing, that the responsibility now lies with the region and that is what is different. Now you tell me that the level of responsibility has not changed. I am just wondering what you were talking about all summer long in public hearings. That is all.

1730

Mr. Kanter: Let me try it again. The level of government that will have responsibility for decisions on Sunday shopping is the regional level. That was set out in the legislation, in Bill 113, which was introduced in April or May. The definition of a municipality was, I think, quite clear. That is incidentally consistent with the existing Retail Business Holidays Act where again a municipality includes a regional district or metropolitan municipality but does not include the area municipalities thereof. So that the level of government that has the power to make the decision is the regional government. That is not an amendment. That is not a change. That is what our bill said and that is consistent with the previous legislation.

The change that occurred, the amendments that we have suggested—one of which has been passed—would ensure that all municipalities provide their local citizens with a chance to be heard. I think it is a very important right on this very important issue.

We have said in the clause that was passed that: Before passing a bylaw under the subsection, "the council of a municipality shall hold a public meeting in respect of the proposed bylaw; shall publish notice of the public meeting in a newspaper having general circulation in the municipality at least 30 days before the meeting is to be held; and shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed bylaw."

That was not in the old law. That was not, to be quite honest, in the new bill that was before the House. That was an addition, a change that members of the government party made after hearing the deputants, after hearing people say they felt that was an important issue. They wanted a say in it. We have, through that motion, given every citizen of this province a say, a voice in this important issue, a say and a voice that they did not have before.

Mrs. Cunningham may be right that some municipalities may have done it as a courtesy, but they did not have a legal obligation to do it. They could not be challenged on the basis that people were not given the right to speak out. I say again this was done by a vote of the government party. This right to participate was voted against by both the Conservative and the New Democratic parties. That is a change from the old law.

Second, and probably more relevant, more to the point, the clause that we are now considering, which very explicitly sets out the power of a regional council or local council, where there is no regional government, to establish a plan for Sunday shopping. This again is optional because they do not have to do anything. If they do not do anything they stick with the provincial framework of closing. However, in the past some councils seemed to consider applications on a somewhat ad hoc basis; they may or may not have held public hearings. We are merely pointing out to them that they have the opportunity to look at Sunday shopping in a holistic way, that they may set out criteria; they may use tourism or multiculturalism or trying to discourage Ontario residents from shopping elsewhere, or helping senior citizens. They may put these criteria in. They may define these criteria, as broadly or as narrowly as they like. This is an opportunity that we are presenting to local municipalities. We are also insisting that they be published so that local residents can be aware if their council takes up this opportunity. In our view, these measures strengthen and improve the current bill and certainly are a marked improvement over the former Retail Business Holidays Act.

Mrs. Cunningham: So the bottom line is nothing has changed except now it is being regulated whereas before it worked on its own with regards to processes within municipalities and public hearings. The bottom line now is that they have a duty to hold public hearings whereas before there was no such duty.

Mr. Kanter: That is one of the changes in the bill. There are a great number of others. There are other changes as the member knows with respect to stepping up the fines, to stopping roping-off, to allowing municipalities to get injunctions. There are a great number of changes in other parts of the bill.

Mrs. Cunningham: No, no, we are just on the public hearings in the municipality. I am just talking about as they relate to the municipality. That is all I want to talk about right now. The other part is that the level of decision-making has not changed. It has always been with the regional government. That is your statement. I have clarification. I do not

particularly agree with it but it will be most useful. Thank you.

Mr. Chairman: Any other members?

Mr. Farnan: Yes, it is along those lines and I would like to ask the parliamentary assistant so that I understand clearly. If a regional government is contemplating allowing a particular municipality within its region to have Sunday openings and the regional government has to advertise, is the onus on the regional government to advertise just within the municipality that is going to have the Sunday opening, or must it advertise across the entire region?

Mr. Kanter: My understanding would be the definition of municipality in clause 1(1)(aa)—I am not quite sure which section of the bill you are referring to. If you are referring to the section that we passed previously with respect to passing a bylaw, the mandatory provision definition of municipality would be region-wide, consistent with the rest of the legislation. Similarly, in the section we are currently looking at, if a regional council adopts a plan, that would have to be published in a newspaper having circulation in the municipality defined as a regional municipality.

Mr. Farnan: So if I could put that into a concrete situation, if we were talking about the municipality or the region of Waterloo, and within that area the municipality of Cambridge decided that they were going to permit Sunday opening with some particular criteria, they would take that to the region. It would be dependent upon the regional council to pass a resolution in favour of that and the regional council would then be responsible for informing the citizens of the municipalities of Waterloo and Kitchener and North Dumfries and every other municipality.

Mr. Kanter: Yes.

Mr. Farnan: Now, if I could ask a question. Is there any provision in your thinking for a situation where there is not a newspaper that is region-wide?

Mr. Kanter: Well, Mr. Farnan, my guess would be that if there is no newspaper having general circulation, the municipal council, the clerk, would have enough sense, knowledge, background or whatever, to publish it in more than one newspaper to ensure that it was circulated throughout the community. I expect the clerk would have had experience on things like a regional plan, where again every region is required to have a regional plan. I believe that notice of such a plan must be published, must be available to the population and I expect that there might be two or three newspapers that would have to be used or perhaps a greater number to reach most people in the region of Waterloo.

Mr. Farnan: Would you consider that there should be some form of wording that would address that particular situation? It appears to me that you may very well be right. The regional municipalities, I am sure, have some experience with dealing with the advertising of a particular motion or issue and they usually have a standard procedure of newspapers or radio or whatever.

However, I would suspect that the government wants to introduce a standard below which it would not be accepted by the province. I am wondering if the standard as enunciated in here, with just the one newspaper, which in some regions might not—I will give you an example of Kitchener-Waterloo or the Waterloo region. You have a situation where I suppose the regional

newspaper would be the Kitchener-Waterloo Record, but if you were to look at the circulation of that newspaper within the area of Cambridge, I suspect that the Cambridge Times is a newspaper that hits every household in Cambridge and yet by using the criteria as is outlined here, the people of Cambridge could indeed be in the dark.

1740

Mr. Kanter: Mr. Farnan, perhaps I could answer your question. It is certainly the intention of this government that people be in the light, not in the dark. That is why we have moved this motion and that is why we moved the previous motion to ensure that there be a public hearing with notice. We might wish to consider as a committee whether the current wording would preclude the regional municipality of Waterloo from advertising in one or two or three or four newspapers. I am not sure that it would.

If you are concerned that it would, I think we could consider the possibility of "in a newspaper or newspapers having general circulation in the municipality." If you were to move such an amendment we might want to have some discussion with legal counsel as to the necessity of such an amendment but I think in terms of the intent of the government, that would be consistent with our intent.

Mr. Farnan: I am very glad to hear that the intent is there and to agree that you would be prepared to look at some wording. I would certainly be prepared to bring you back some wording tomorrow that perhaps might be agreeable.

Mr. Chairman: Committee members, because of a motion in the House yesterday and a change of committee members we are without a vice-chairman. I wonder if we could deal with that issue now and then adjourn, recognizing that this could be an entertaining evening for all members of various parties. Are you content with that? Unanimous consent?

Mr. Hampton: Unanimous consent for what?

Mr. Chairman: First, that we deal with the question of vice-chairman and then that we adjourn.

Agreed to.

Mr. Chairman: Are there any nominations for vice-chairman?

Mr. Kanter moved that Mr. Chiarelli be the vice-chairman of this committee.

Mr. Farnan moved that the member for Rainy River, Mr. Hampton, be the vice-chairman.

We will deal with Mr. Hampton first. Those in favour of Mr. Hampton as vice-chairman. Those opposed. It is defeated.

We will now deal with Mr. Kanter's nomination of Mr. Chiarelli. Those in favour of Mr. Chiarelli as vice-chairman. Those opposed. Carried. It is unanimous. I declare Mr. Chiarelli vice-chairman.

It being near six o'clock and with unanimous consent we adjourn until two o'clock next Monday after routine proceedings.

The committee adjourned at 5:43 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Monday, October 31, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Hart, Christine E. (York East L) for Mr. McGuinty

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, October 31, 1988

The committee met at 3:39 p.m. in room 228.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 4:

Mr. Chairman: I recognize a quorum. When we last met, we were dealing with section 4. There was an amendment by Mr. Kanter.

Mr. Kanter had moved that section 4 of the act, as set out in section 4 of the bill, be amended by adding thereto the following subsections:

"(5) The council may establish a plan setting out the criteria to be considered by it in determining whether a bylaw should be passed under subsection (1).

"(6) If the council adopts a plan, it shall ensure that the plan is made available to the public by publishing it in a newspaper having general circulation in the municipality."

Are we ready to vote on this issue?

Ms. Collins: Yes.

Mr. Chairman: Do you wish a recorded vote?

Ms. Collins: Yes.

Mr. Chairman: Those in favour? Those opposed?

Mr. Hampton: Mr. Chairman, if I could—

Mr. Chairman: I am sorry, a vote has been called.

Interjection: I tried my best.

Interjection: Nice try.

Mr. Hampton: First, I would like to know what we are voting on.

Ms. Collins: He just read it out.

Mr. Chairman: I just read it.

Mr. Hampton: I am sorry; I was being distracted by the former parliamentary assistant to the Attorney General.

Mr. Chairman: You would not think that was planned, would you?

Mr. Hampton: I thought it might be planned, but knowing your reputation for fairness, I knew you would repeat the question.

Mr. Chairman: All right. You want it again?

Mr. Hampton: Please.

Mr. Chairman: Mr. Kanter has moved that section 4 of the act, as set out in section 4 of the bill, be amended by adding thereto the following subsections:

"(5) The council may establish a plan setting out the criteria to be considered by it in determining whether a bylaw should be passed under subsection (1).

"(6) If the council adopts a plan, it shall ensure that the plan is made available to the public by publishing it in a newspaper having general circulation in the municipality."

Do any members wish to speak to this amendment by Mr. Kanter?

Mr. Hampton: I wish to speak to it.

Ms. Collins: On a point of order, Mr. Chairman: Was there not debate on this already?

Mr. Chairman: Actually, there was. That has been read before, but committee debate is endless, as it were.

Mr. Ballinger: So we noticed.

Mr. Hampton: If I understand it, I think this was introduced by—

Mr. Chairman: It was agreed to interrupt the debate for the issue of Mr. Runciman's issue. We moved from this and we are now back to it.

Mr. Hampton: So the debate was not completed.

Mr. Chairman: No, but I hope your debate will be on topic and short.

Mr. Hampton: It certainly will be on topic.

Mr. Chairman: What about the second part of it?

Mr. Hampton: I said it will be on topic.

Mr. Chairman: Oh, all right.

Mr. Sola: How about brief?

Mr. Ballinger: —Harrisard so I can follow the bouncing ball when Howard is reading here.

Mr. Hampton: Mr. Chairman, would you be kind enough to give Mr.

Ballinger all kinds of Hansards. In that way he will busy himself for at least an hour.

Mr. Chairman: Mr. Ballinger is actually the greatest customer of Hansard. Go ahead.

Mr. Hampton: I have made some remarks on the government's proposed amendments here already. I merely want to summarize those remarks before going on in greater detail. I think it is helpful to review what, for example, we received from the Ontario Convenience Stores Association in terms of what it was advising.

To put it in context, what the Ontario Convenience Stores Association was saying was, "Look, we faithfully accept that the government is going to go ahead with this bill, with the minister's described essence of this bill, so we, representing the convenience stores, merely want to establish the kinds of safeguards and procedural guidelines that will at least make this somewhat palatable and ensure that where Sunday opening bylaws are proposed, there is an element of fairness and fair process."

I quote from their letter of October 3. They advise on the guidelines and they say, "Without these guarantees of a fair process, we fear that the good aspects of the bills will be to no avail because the domino effect will surely follow."

That was their general comment. Then they went on to propose their fairness guidelines. It is interesting to compare what the government has proposed here in the way of an amendment with what the convenience stores association is asking for. I want to make those comparisons rather baldly. They are saying: "Notification: Once a local council decides to consider a Sunday shopping bylaw or amendment, the following steps must be taken: a notice announcing the council's decision to review the Sunday shopping issue and providing details of a public meeting must be sent to all persons who have asked to be notified about any proposed changes in Sunday shopping bylaws."

There is no "may." It is a "must." They want to be absolutely sure that—

Mr. Chairman: I do not want to call you to order, Mr. Hampton, but that in fact was an amendment that was moved and defeated. Therefore, any further discussion on it is really out of order.

Mr. Hampton: I realize that, Mr. Chairman. I do not want to elaborate on the specifics of what they were asking for. I simply want to refer to the general concepts they were asking for in terms of procedural fairness. That is my purpose in quoting, going back to their submission again.

Mr. Chairman: Again, without being unfair to you, and you have the right to unlimited debate in committee, does it advance the cause of this bill to have discussion on something that has already been voted on? I still have to find that this is out of order. You are actually debating an issue that has already been voted on. Under the rules, unless you are moving to amend it, I have to find that you are out of order.

Mr. Hampton: In its submission, the Ontario Convenience Stores Association sets out a whole framework of procedural fairness. My purpose in referring to it, and I do not intend to elaborate on each point, is to illustrate for the record that what the government is proposing in subsections 4(5) and 4(6) just does not match up with what a representative body like the

Ontario Convenience Stores Association is asking for in terms of procedural fairness.

I appreciate your point, Mr. Chairman. You are saying that you do not want to hear debate again on a specific part of the procedural guidelines. I appreciate that. I will not go into that in any detail. But there is a whole framework of procedural fairness guidelines that the association asked for. That whole framework does speak to subsections 4(5) and 4(6).

Mr. Chairman: If you want to go on and deal with anything other than the question of changing subsection 5 from permissive to mandatory, which has already been voted on and defeated, I will hear that. but other than that, I think you are out of order.

Mr. Hampton: I will go on. I will take whatever advice you wish to offer me at whatever particular time, Mr. Chairman. If you feel I am stretching the line, please advise me. I do not intend to, but again, there is a whole framework here that is being asked for. My point is merely to illustrate that the government's proposed amendments do not meet that framework and to make that point for the record. I will avoid as much as possible dealing with a particular minutia that has already been debated or voted on.

Mr. Chairman: We will listen, but as I say, if they have other criteria besides an argument as to why subsection (5) should be mandatory as opposed to permissive, I will hear it, but other than that, I rule you out of order in that you are commenting on a vote that took place. It has already been debated. Unless you are moving to amend it under the rules, it is not in order.

Mr. Hampton: I will get to that. The second point the association made is that "requirements for the contents of the notice and its circulation should be set out in regulations by the provincial government or a designated provincial review body."

Subsection 4(6), as we have referred to before, says, "If the council adopts a plan, it shall ensure that the plan is made available...." That falls far short of what is being asked for, that "the contents of the notice and its circulation should be set out in regulations." "Public comment: The local council must hold at least one public meeting. The meeting must be advertised."

We have looked at the 30-day thing and we have dealt with that. "Anyone attending the public meeting must be given an opportunity to speak." I will grant you that is already guaranteed in terms of the right to be heard and the right to be heard in writing. I will grant that the government's amendment, if not directly, at least silently, speaks to those things.

1550

But then the Ontario Convenience Stores Association is coming to the meat of the matter again, the need for a review or an appeal. As we can see, subsections 4(5) and 4(6) do not live up to that either, the right to have a sober, second look at what is happening. I submit that it is not that the Ontario Convenience Stores Association does not trust or does not have faith in local municipal councils. I think that if they were speaking here now, the kind of example they would want to point to is the example that has been portrayed on the front pages of the Globe and Mail for the last week as to how

the development industry, election campaign funding and municipal politics can all get involved in this.

Therefore, there is the need for a sober second look at what is happening. I do not see that within the confines of the government's proposed amendment, either in subsection 4(5) or 4(6), the making available of a ground or means for a sober second look at what is happening. During our meetings this summer, we heard conflicting information. We heard from mall developers, and from developers in general, saying that they feel they do not have the capacity to exert influence, either on municipal councils or upon their tenants.

But we heard from tenants who said exactly otherwise, that they felt they were open to all sorts of influence, whether financial or just in terms of the capacity to have to deal with a landlord in a lease situation where the landlord holds all the cards. The kind of economic or political power that come into play here at the municipal level is something that the Ontario Convenience Stores Association obviously understands and obviously feels has to be dealt with within the confines of this legislation.

Not to provide a mechanism to deal with it is to invite all kinds of trouble down the road. If I can paraphrase what a convenience store operator said to me, their fear is that a bylaw proposing some form of open Sunday shopping could be passed by a municipal council after very brief debate. Even with the notice provisions that have now been proposed by the government and have been amended by opposition amendments, even with those notice provisions, it is still a very short time in which a Sunday shopping bylaw could be proposed and could be passed and come into effect.

If I can paraphrase the convenience stores association. It finds it is too short a time, much too short a time.

Mr. Chairman: I want to go back. Are you referring to clause 4(1a)(b)? Is that the timing they are talking about? Because there is nothing in subsections 4(5) and 4(6), which are the amendments under debate that refer to that.

Mr. Hampton: Mr. Chairman, all I am referring to is the lack in either subsection 4(5) or 4(6), even though subsections 4(5) and (6) set out a plan for setting out criteria to be considered in determining whether a bylaw can be passed and set out that if the plan is adopted, the plan must be made available to the public. Okay?

Mr. Chairman: Yes.

Mr. Hampton: I am simply pointing out that this in itself, these two things in themselves, as procedural guidelines, are inadequate.

Mr. Chairman: Are you suggesting an amendment? If you are—

Mr. Hampton: I am going to suggest an amendment.

Mr. Chairman: Perhaps you could place it before us and then you could debate that. That would be more in keeping with—

Mr. Ballinger: Don't give him any more help than he needs, Mr. Chairman.

Mr. Chairman: I would like to have the amendment before us, so that I do not have to keep ruling you out of order. If you have an amendment, place it before us and we can then debate that.

Mr. Hampton: There is a problem here in trying to deal with this in a nut here, a bolt there, a chunk here and a chunk there. As the Ontario Convenience Stores Association points out in their submission of October 3, there has to be a framework to this. All I am trying to point out is that the framework that exists now, even with the amendments that have been proposed by the government—some have been passed and some have been further amended by the opposition parties—is clearly inadequate. Subsection 4(5) and subsection 4(6) as proposed by the government still leave an inadequate framework.

Mr. Chairman: I think you have made that abundantly clear.

Mr. Ballinger: For three days in a row he has.

Mr. Chairman: Mr. Ballinger, no interjections.

If you are planning to introduce an amendment, I think in fairness to the members of the committee, so they can see why you are addressing the amendment, perhaps we could have it. I will put it on the floor and we will deal with the amendment.

Mr. Hampton: Actually, I want to introduce about three amendments. They all flow out of this.

Mr. Chairman: Perhaps you would like to put all three on the floor. We will deal with them and you can debate them.

I do not want to hamper you within the framework of the amendments themselves, but you are really outside of those amendments. What you are talking about is an appeal procedure. You are talking about a method for giving people the right to react, and I think we need those before us if you are going to debate them. So if you want to pass them up here, I will read them and we will deal with the amendments first. You can then speak on them and Mr. Runciman can as well or any of the members of the government.

Without it we may do it all over again, and I think in fairness, the members should know what you are debating. Who knows, you may be able to persuade them.

Mr. Hampton: What I am working up to is not necessarily an appeal procedure. As we talked about earlier, an appeal procedure should perhaps be a further section. We may want to set out a section 4a something else, which would be an additional section. Perhaps the issue that arises here is the need for a review, the capacity to have a further review within subsection 4(5) and subsection 4(6), and perhaps a further subsection, subsection 4(7).

Mr. Chairman: You have two choices. You can put your amendments on the floor and debate them—or debate these amendments here, I should say, within the framework of them—or you can move an amendment to that amendment. That is what I am asking you to do. You know what you are debating, but we do not know what you are debating at the moment because the amendment is not on the floor.

Mr. Hampton: I appreciate that, but there has to be some point in here where we can compare what the government is offering in terms of

procedural safeguards in an overall way with what, for example, the convenience store operators are asking for in terms of procedural safeguards in an overall way.

Mr. Chairman: You can do that fully if you place the amendment on the floor. You can debate the amendment and compare it with what the government already has on the floor in order to try to persuade members of this committee that there should be an additional item from your amendments or the inadequacy, as you say, of the government's amendments. Without having them on the floor, I have to limit you to what is in subsection 4(5) and subsection 4(6).

Mr. Hampton: Then what I would propose is a new subsection 4(7), to make it fit within the context.

Mr. Chairman: I am advised by the clerk—and I am not trying to be difficult—that is a new motion. Perhaps the members would be content to stand this one aside to hear subsection 4(7).

Mr. Kanter: I think you are absolutely correct in the ruling you have been making. We have an amendment before us which has been debated at some length. Should Mr. Hampton have comments—he might wish to amend the proposed subsections 4(5) and 4(6) or he may wish to vote against them—but I think you are absolutely right that the appeal mechanism, should he or other members wish to move it, would be appropriate only as a separate subsection of the bill. I think Mr. Hampton himself has admitted that. I think we should proceed and wrap up the debate on this section.

This is at least the third day that we have been debating this particular amendment the government has proposed. I think we should complete the debate on this subsection. There has been a very full and extensive debate on it. If Mr. Hampton has additional new points to raise on this section, that is fine. If he has other points on other procedures that involve other forums, certainly he has every opportunity to do that as a separate section to the bill.

1600

Mr. Chairman: I would still ask. I understand what you are saying, but I wonder if there is unanimous consent from the members that subsection 5 and 6 might be stood down to deal with subsection 7.

Mr. Kanter: No, there is not unanimous consent.

Mr. Hampton: The problem is even more complicated than that because what the government is offering in the way of procedural safeguards within subsections 4(5) and 4(6) is a procedural safeguard that is optional. That is the real problem.

Mr. Kanter: On a point of order, Mr. Chairman: Mr. Hampton is now regressing, shall we say, to a previous motion which has been put, has been debated and has been decided.

Mr. Chairman: I think my ruling has been and will continue to be that is the case and that has, in fact, been voted on. It was defeated. I am trying to help you, but the clerk tells me that subsection 7, if it is to be 7, would be a new item. I do not have unanimous consent to stand down subsections 5 and 6 to deal with that. Unless you are prepared to amend the

section that is presently under discussion, I am going to have to limit you to discussing that section as opposed to discussing what I am sure is your interest in bringing forward something else.

You still have the opportunity, if we vote on subsections 5 and 6 and it is carried, to then move subsection 7 and to have full debate on it at that time.

Mr. Hampton: I appreciate that, but the point to be made is that trying to build the procedural safeguards that are being asked for by the Ontario Convenience Stores Association and by other organizations that have appeared before the committee—trying to build those kinds of procedural safeguards that have been asked for into what the government is offering in subsection 4(5) and subsection 4(6) just will not work.

What we have is a section that purports to offer some sort of procedural safeguards, but clearly is inadequate in the procedural safeguards it is offering. That is where the hamstring is. That is why I think you ought to allow wide discussion about subsection 4(5) and subsection 4(6) because the way the government has brought it forward, there is very little that can be done with it.

What I want to get on the record again is that—and I go back to the point that was debated earlier—we tried to change it from "may" to "shall". If you have "shall" in there, then you can add in certain other procedural safeguards that make subsections 4(5) and 4(6) meaningful.

We have already held a vote on that. That is true. It is "may". All I am trying to point out is that now, since it is "may", since it is not "shall", since it is only "may", and is therefore optional for any municipal council, you have locked out all of the other procedural safeguards that could have been put into subsections 4(5) and 4(6) to end up with some very meaningful procedural safeguards.

That is my point, that subsections 4(5) and 4(6) are very limited in what they can do in terms of procedural safeguards. In fact, I think if someone from the convenience store association were looking at it, in comparison with what it has asked for and what the government is offering, it might say that it is virtually useless.

Mr. Chairman: I know what you are trying to say, but I do not make the rules. I am directed by them, that if you are in fact disputing, discussing or debating an issue that has already been voted upon, you cannot do that within the framework of, I think it is, standing order 19, unless you are moving to amend it or to reverse the vote.

Mr. Hampton: As I pointed out, there is little now that can be done with subsection 4(5) and subsection 4(6). The way they are set out now, you could tack on all the procedural safeguards you wanted. I could propose amendment upon amendment upon amendment that would purport to offer procedural safeguards to members of the public who might be interested in this kind of a bylaw but because the initial clause says that it is all optional, let's recognize the obvious. We would be engaged in a farce. We would be in fact telling people we are offering them something when in fact we are offering them nothing at all. We are offering the possibility of procedural safeguards, but that is it.

Mr. Chairman: In essence what you are saying is that because of the

vote creating permissive legislation as opposed to mandatory legislation there is no amendment that you could bring forward that would be—

Mr. Hampton: I could bring them forward. Just reading the Ontario Convenience Stores Association brief, I could propose at least five or six. The point is they are not going to make subsection 4(5) or 4(6) any more meaningful than they already are. It is not going to make them any more effective in terms of providing for procedural fairness than they are already.

Mr. Chairman: I do not want to be difficult but—

Mr. Hampton: I do not want to be difficult either.

Mr. Chairman: —I have to get back to subsections 5 and 6. Unless you intend—which we have already discovered you cannot do unless you amend either subsections 5 and 6, then I have to confine you to debate within relevant terms of subsections 5 and 6.

Mr. Hampton: I think I have made my point on subsections 5 and 6. The point I wanted to make is that they do not provide for any procedural fairness, that they provide an illusion at best and that we could sit here from now until doomsday and try to amend them further by adding in or tacking on some of the other procedural safeguards that were asked for and it be of no effect.

Mr. Chairman: Are there any other members who wish to speak to this amendment by Mr. Kanter?

Mr. Runciman: I do not have a copy of it.

Mr. Chairman: I am sorry, you do.

Mr. Runciman: Is it part of this package?

Mr. Chairman: You have a whole package there. It is part of the package.

Interjection: It is the public relations package.

Mr. Chairman: Go to about page 4; it is right after Mr. Farnan's handwritten one. Have you got it? I will give you a few seconds to read that if you wish.

Let me know, Mr. Runciman, when you feel comfortable to proceed and we will continue.

Mr. Runciman: I feel comfortable.

Mr. Chairman: Are there any further comments by members of the committee on the amendment by Mr. Kanter?

Are you prepared to vote? Do you wish a recorded vote?

Mr. Hampton: Yes.

The committee divided on Mr. Kanter's amendment which was agreed to on the following vote:

Ayes

Ballinger, Chiarelli, Collins, Kanter.

Nays

Hampton, Runciman.

Ayes 4; nays 2.

Mr. Chairman: We now move back to the government motion which is the next one. It has actually been moved already but I will read it again.

Mr. Kanter moves that section 4 of the act as set out in section 4 of the bill be amended by adding thereto the following subsection:

"2a. A bylaw or regulation under this section does not apply so as to prevent the sale or offering for sale of goods and services exempted under subsection 3(5) or (7) from the operation of section 2."

Mr. Chairman: Do members wish to speak on this matter?

Mr. Kanter: Perhaps in fairness to the third party, this was held down largely for a question of interpretation that Mrs. Cunningham wanted to pursue in terms of what would be allowed to be open and not allowed to be open, and she raised some interesting questions and an interpretation, which I then directed to our counsel, Mr. Spring.

1610

Unfortunately, Mr. Spring is also having some health problems today, but I am wondering if he might be able to indicate the general nature of the opinion that he has as to what would be permitted to be open and not open on this matter in response to the question put by Mrs. Cunningham. Can you do that?

Perhaps if you came to the microphone, Mr. Spring, that would be easier for you and Hansard in particular. I know in advance that you have some voice problems. We will try to be particularly attentive today.

Mr. Spring: As I recall Mrs. Cunningham's question, it centred around whether or not tourist establishments, which we might call an irregular configuration, tourist establishments that offered more than, say, bed and breakfast, but offered other types of retail facilities within their general area, if I may, would be exempt under subsection 3(5) of the legislation.

Subsection 3(5) of the legislation currently in force says that section 2, which is the general prohibition section in the legislation, "does not apply in respect of the sale or offering for sale by retail,

"(a) of liquor under the authority of a licence or permit issued under the Liquor Licence Act;

(b) of goods or services under the authority of a tourist establishment licence issued under the Tourism Act."

Mrs. Cunningham's question, as I recall, was directed towards what types

of establishment would be exempt from the provisions of section 2 under clause 3(5)(b), the clause mentioning the Tourism Act.

While I have not had my view confirmed with counsel for the Ministry of Tourism, it would be my opinion that, generally speaking, most tourism establishments offering sleeping accommodation, or whatever their configuration or adjunct facilities, are exempted from the provisions of section 2 by virtue of the fact that they are licensed in accordance with the Tourism Act.

In other words, subsection 3(5) of the Retail Business Holidays Act provides them with the requisite exemption from Sunday and holiday closing.

Having said that, I will concede that there may be circumstances in which it could be shown that some part or parts of the particular complex clearly lie outside the exemption granted by the tourism licence and outside any other exemptions permitted under the legislation. Where that could be shown, the operator of such an establishment would be free to approach either the provincial government or a municipal council, depending on the location of the establishment, for a regulation, in the case of the provincial government, in an unincorporated, if I may use that word, territory or a bylaw where the establishment falls within a municipality exempting that portion of the operation from the provisions of this legislation. That is, in fact, the way the legislation currently operates.

Mr. Runciman: Can you give us an example?

Mr. Spring: I am hard put to, because all of the establishments of which I am personally aware, the establishments or the configurations that I can imagine, I believe would in fact be exempt under the Tourism Act.

Let me put you a case. Supposing there was a tourism establishment, call it a motel if you will, a fishing establishment, a provisioner's establishment that offered breakfast, offered sleeping accommodation for the recreational or the motoring public and it had with it a shoe store, not a shoe store selling boots for hunters or anything like that but a shoe store totally unrelated to the general activities of what you would conceive to be a tourism establishment.

In those circumstances, there is an argument to be made that that portion of the establishment would not be granted an exemption under this act by reason of the fact that the main establishment was licensed under the Tourism Act.

Accordingly, it would be incumbent upon the operator of the establishment, if he wished to open that particular part of his establishment on a Sunday or other holiday, to seek another exemption and he might do so under the current act or under the amendments as they may be passed under Bill 113 as proposed for that particular section of his establishment.

My example may not be particularly apropos. I was trying to suggest that one particular facet of an establishment is totally unrelated to anything else and I concede to you that there may be those.

The Vice-Chairman: In view of the fact that the question was raised by Mrs. Cunningham from the third party, I wonder, Mr. Runciman, if perhaps you are prepared to indicate satisfaction with the response. You do not have any supplementary follow-up questions?

Mr. Runciman: I am not prepared to indicate any degree of satisfaction. Mrs. Cunningham is thoroughly immersed in this bill and in the public hearing process that was undertaken and I am sure she will want to pursue this further. I would certainly not like to see it set aside in any definitive way or final way simply because she is unable to be with us today. Perhaps it should be dealt with tomorrow.

The Vice-Chairman: Does anybody else have any other comment with respect to the procedure we might follow on this issue?

Mr. Kanter: Perhaps we should ask if Mr. Runciman has any knowledge as to whether Mrs. Cunningham is likely to be at the committee tomorrow? We understood she would be here today. We are not aware of why she is not here, if she has other pressing business or whatever. Can you advise us whether she is likely to be here tomorrow?

Mr. Runciman: My understanding is that she will be.

Mr. Kanter: But she is not able to be here today, as far as you know.

Mr. Runciman: No.

Mr. Kanter: I suppose we may have to stand it down. I think it is somewhat unfortunate in that Mr. Spring has answered the question but I suppose these things do happen. I would certainly hope she would be here tomorrow so that we could deal with it. It has been a matter that has involved some research on the part of legal staff, as Mr. Runciman can appreciate, and, in fact, I believe Mr. Spring may have some difficulty in being here next week. Is that correct, Mr. Spring?

Mr. Spring: That is correct, but my replacement will be fully briefed on the issue.

The Vice-Chairman: You will be here tomorrow?

Mr. Spring: I will, indeed.

The Vice-Chairman: Do we have unanimous consent to stand it down until tomorrow? The clerk has suggested the possibility that we might have Instant Hansard for Mrs. Cunningham so that she can be briefed beforehand. Perhaps it can shorten the process.

Mr. Kanter: That would be very helpful.

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The Vice-Chairman: The next motion which we will be considering is a New Democratic Party motion regarding section 4. Perhaps the clerk can indicate to me who is the mover of the motion.

Mr. Hampton: Mr. Farnan originally presented this motion.

The Vice-Chairman: What I will do is pass it back to the chairman and let him indicate the exact motion that we are referring to. Apparently, there are one or two. There is one NDP motion which is handwritten and which the clerk has suggested needs some clarification. It is suggested that we deal with another NDP motion dealing with section 4. On that point, I will pass it back to the chairman.

Mr. Chairman: Mr. Hampton, there are some questions with Mr. Farnan's handwritten amendment that the clerk would like to ask Mr. Farnan. In light of his absence—

Mr. Hampton: Mr. Farnan is tied up in the House right now.

Mr. Chairman: All right. Can we have unanimous consent to stand that down and move on to the next NDP motion? It will give Mr. Farnan a chance to come in and answer those questions.

Mr. Hampton: That is fine.

Mr. Chairman: Do we have unanimous consent to do that?

Agreed to.

Mr. Chairman: I gather the next motion is an amendment moved by you, Mr. Hampton.

Mr. Hampton: That is right.

Mr. Chairman: Mr. Hampton moves that subsections 5(1) and (2) of the act, as set out in section 4 of the bill, be struck out and the following substituted therefor:

"(1) Despite any other provisions of this or any other acts or the bylaws or regulations under this or any other act, a retail business may be carried on in a retail business establishment on a Sunday if the retail business is always closed to the public throughout another day of the week.

"(2) The exception set out in subsection 1 does not apply to a retail business that employs more than seven individuals."

Mr. Hampton: Mr. Chairman, you will recall, and I think members of the committee will recall, that when some of the organizations appeared before our committee there was a fair amount of discussion about section 5, as proposed in the bill. I will go through section 5 and just highlight what some of that discussion was about.

First, in subsection 5(2), we get into "the religion of the owner" and what "religion of the owner" means is:

"(a) in the case of a sole proprietorship, the religion of the sole proprietor;

"(b) in the case of a partnership, the religion named in a written agreement;

"(c) in the case of a corporation, the religion named in the bylaws of the corporation."

We heard from at least two organizations that they resented a requirement in an act which would have the effect of forcing a sole proprietor or member of a partnership to, in fact, state a religion, to identify his religious belief or the religious system which he follows.

They gave us a number of reasons why they found this offensive. I think, to put it in the context of the kind of multicultural society we live in now

and the kind of multireligious society we live in now, the organizations which appeared before us said it should be no part in their business to have to identify certain religious beliefs and that if the government wants to regulate the opening and closing of retail establishments on Sunday, it should not be bringing religion into that issue of the operation of commercial enterprises.

In terms of some of the recent jurisprudence, we heard at least one organization say that it felt section 5 could be challenged under the charter on the basis that it requires an identification of religion; it requires a public disclosure of someone's religious beliefs. Whether or not it would be in violation of the Charter of Rights, it seems to me that it is offensive to say to someone in the context of operating a commercial enterprise, in the context of operating that enterprise on a Sunday, that he has to identify his religion. There has to be a better way of dealing with the problem we are trying to grapple with in section 5.

I think the problem we are trying to grapple with is that retail establishments may want to remain open on Sunday for a religious reason, for something to do with their religion or the religion of their clientele, and may want to deal with that clientele or satisfy the consumer demand of the clientele. That is the problem we are wrestling with, but it seems to me we can deal with that without asking someone to identify his religion.

The way this is done in Manitoba, for example, is to write religion right out of the equation. Quite simply, if you want to stay open there on Sunday because you feel that the clientele in your particular community or your particular part of the city are of a certain religious persuasion and may have Saturday as the day of rest or may have Monday as the day of rest, or whatever, you can opt to stay open on Sunday.

Mr. Chairman: Excuse me. Let me just clarify one thing, Mr. Hampton. Subsection 2 does not apply to a retail business that employs more than seven individuals. Are you saying that if the business employs more than seven individuals, subsection 1 still applies and there is no religious—or Sabbatarian as we called it in the old act—provision for businesses that have more than seven employees, or are you saying that subsections 1 and 2 are to supplement the present subsections 5(1) and 5(2) of the government's proposed legislation?

Mr. Hampton: No. We are saying they would replace the government's proposed subsections 5(1) and 5(2).

Mr. Chairman: I just want to be clear on that. So subsection 2 is really saying that the exception in 1 which allows stores to stay open—

Mr. Hampton: On Sunday.

Mr. Chairman: —on Sunday if they have closed on some other day during the week, really applies only to businesses of seven employees or less.

Mr. Hampton: That is right.

Mr. Chairman: Okay. I just wanted to be clear on that. So the rest of it is kicked out; it is not a supplement.

Mr. Hampton: That is right.

Mr. Chairman: Is everybody clear on what I was asking him there? All right. Go ahead, Mr. Hampton.

Mr. Hampton: The amendment we have proposed is very similar to the legislation in Manitoba. The legislation in Manitoba, for those members of the committee who may not live as close to that province as I do, has been relatively successful. It has been challenged once in the courts and has been upheld. This section was challenged and has been upheld. Some of the comments that have come forth from the court have simply said that this same section which appears in the Manitoba legislation is an adequate response to the need to deal with the Sabbatarian exemption.

I would argue that it is a much better response than that which the government is putting forward in subsections 5(1) and 5(2), where we are asking someone to identify his religion.

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Mr. Ballinger: We would expect that, coming from you, Howard.

Mr. Hampton: I can only assume by Mr. Ballinger's remarks that Mr. Ballinger wants us running around the province asking people what their religion is. Now maybe that does happen in Mr. Ballinger's riding, perhaps there is that sort of religious inquisition in Mr. Ballinger's riding. I do not know. In my constituency, your religion is a private matter. We do not involve ourselves in such inquests as to people's religious preferences.

Mr. Chairman: Do not involve yourself in reference to interjections either.

Mr. Ballinger: You do not have to jump all over me. I was only interjecting, you know.

Mr. Hampton: I generally do not reply to these sorts of remarks from Mr. Ballinger, but I did not bring my books with me today that I could refer him to to assist him. Not having my books here, I feel it only fair that I reply directly.

Mr. Chairman: The parliamentary assistant to the Attorney General has just arrived and there are police cars outside.

Mr. Hampton: I see the parliamentary assistant to the Attorney General is trying to distract everyone.

Mr. Chairman: I do not think it has anything to do with that. Maybe I could just go through that for the benefit of those members who were not here. Mr. Hampton's motion is to totally eliminate subsections 1 and 2 of the government's act. Does everybody understand that? Okay. Go ahead, Mr. Hampton.

Mr. Hampton: As I said, what we are proposing—

Mr. Chiarelli: On a point of order, Mr. Chairman: You tried to clarify the purpose of subsection 2 of this amendment. Just to clarify it in my own mind, could this just as readily be read in subsection 1 as a retail business of seven employees or less may be carried on in a retail business? Is that the intent?

Mr. Chairman: That is right.

Mr. Chiarelli: So by inserting those words in subsection 1, in effect, you could just as easily eliminate subsection 2?

Mr. Chairman: What Mr. Hampton's motion is saying, as I understand it, subject to what Mr. Hampton may say, and I think we should all be clear on this, is that the Sabbatarian rule, or Sunday opening, applies only to a business that has seven employees or less. Is that right?

Mr. Hampton: That is right.

Mr. Chiarelli: Are they likely to be more religious, or what?

Mr. Chairman: As I read this—and maybe we should get this clear—the way I understand it, the effect of your amendment, if it passed, would be to say that only a business of seven or less employees could stay open on Sunday and could do that only if it had refrained from opening one other day during the week. Is that the gist of it?

Mr. Hampton: That is the gist of it.

Mr. Chairman: Okay. I hope everybody understands that. That in fact brings it back to the mom-and-pop stores.

Mr. Hampton: As I started out to say earlier, the process has been tried and tested in Manitoba. There is a similar, though not identical, form of local option in Manitoba. But still, in dealing with the question of the Sabbatarian exemption, above and beyond the local option, as the government wants to put it, above and beyond having to go to your municipal council and ask it to propose a Sunday bylaw, what we are proposing in the way of subsections 5(1) and 5(2), we feel is much superior to what the government is proposing.

I repeat it again: We feel it is superior because it does not request that individuals or partnerships or corporations name their religion, and second, it has been tried and tested in another province and it has been found to function quite effectively there. Those would be my remarks at this time. I might want to reserve some time later on, because as I said, this has been tried in the courts of Manitoba, and if discussion warrants it, I might want to refer to some of those cases because there is some intelligent discussion about the Sabbatarian exemption generally and about this kind of Sabbatarian exemption specifically.

Mr. Chiarelli: I just have a couple of points I would like to make. I think Mr. Hampton may have hit the nail on the head when he said this is a very complex piece of legislation. It is very difficult indeed to deal with some of the issues involved in this particular piece of legislation. I think nothing underlines that more than this particular amendment, which I take strong exception to because in the guise of trying to be fair, in the sense of not asking someone to identify his religion, we have basically said, if I understand this amendment correctly, that every retail establishment that has more than seven employees is denied a Sabbatarian exemption because this particular amendment will not apply to them.

From an egalitarian party such as the New Democratic Party that is always professing equality and fairness, I think this amendment very significantly approaches being a travesty of fairness, because for a person of a particular religion that is on a different day than Sunday, on a Friday or a

Saturday, and where there happens to be more than seven employees, that person has no protection.

I guess it is a complex bill and we have to balance various rights and different types of fairness or unfairness. In this particular instance, I would certainly opt for the identification as being the lesser of two evils, as opposed to saying to every business person, every partnership, every enterprise that happens to have eight employees or more that they cannot have the Sabbatarian exemption. I think perhaps the NDP might give more consideration to this amendment when it comes forward, and support it.

The other thing we want to look at with respect to this particular amendment is that it may very likely create more Sunday openings than even the NDP members themselves would wish to see, because in effect, if you take numerically every retail business of seven employees or less, very significant numbers of these retail establishments may choose, for nonreligious reasons, in effect to stay open on Sundays, just on straight commercial business dollar reasoning, and the result might very well be that you will find a lot more stores open than are at present, under this amendment.

I would say, on balance, for those two reasons, that the amendment does not rate a lot of consideration, particularly on the first point where very significant numbers of business people would be denied a Sabbatarian exemption. Those are my remarks.

Mr. Chairman: Mr. Hampton, do you have any reply?

Mr. Hampton: Merely to point out that I do not think Mr. Chiarelli can have it both ways, and I think, in part, that he is attempting to have it both ways by his comments here. It is clear from the wording of the amendment we have proposed that some very large enterprises would not be entitled to a Sabbatarian exemption.

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Mr. Chiarelli: With eight people.

Mr. Hampton: In the modern world, Mr. Chiarelli, in terms of dealing with the retail market, I would say that you can run a fairly sophisticated store with eight people. In terms of all of the facilities and technologies that are available, you can run a fairly sophisticated store.

Let's keep in mind here that we are talking about the retail market. We are not talking about something that is much larger than that. It is clear from what the government has been saying throughout that you have to make some tough choices on this. The government has been saying, if I read it correctly, that the municipality will have to make some difficult choices in terms of Sunday opening. The government has been saying it is very difficult to regulate some of these things. We acknowledge that. We have never denied that.

We have never said this is an easy operation. We have criticized the government for trying to duck some of these difficult issues. We have criticized the government for trying to put it in the hands of the municipalities and then saying, "It is not our affair any more." We have never denied that this is a difficult area to regulate. We have never denied that at all. All we are saying is that if you are really concerned about a Sabbatarian exemption, you ought to keep it as near as possible to the level of

individuals, at the level of a partnership. What we are saying is that this can be most adequately addressed by this sort of Sabbatarian exemption.

For a couple of reasons, we do not like the idea of corporations declaring a religion. When I read the Alberta Big M Drug Mart case, a large drugstore claiming freedom of religion, I found the whole thing a bit farcical. Quite frankly, with the terms that the government has provided in its legislation, we would find that a corporation starts naming a religion of convenience. We find that somewhat objectionable, as I have said, so we want to keep it at a level that is meaningful.

If we are dealing with a Sabbatarian exemption, we do not want someone to have to name his religion, but if he has religious convictions and feels he should stay open on Sunday to deal with his clientele, then we want to keep it on that individual level. We do not want to get involved with corporations or very large business enterprises. We think this amendment speaks to that. It speaks to individuals who may have religious convictions or may have clients who have strong religious convictions and want to meet that particular retail need.

If it is a kosher store or if it happens to be of the Moslem religion and dealing with that particular market and dealing with that particular kind of neighbourhood, we feel this meets that. It meets it much better than what the government is proposing in terms of corporations declaring a religion or in terms of asking individual businessmen to declare a religion. Again, we have not said this is an easy area to regulate; we acknowledge it is difficult.

Mr. Chiarelli says that we may see all kinds of Sunday openings under this.

Mr. Chiarelli: Numerically.

Mr. Hampton: We may see numerous people using the Sabbatarian exemption. All I can say to you, Mr. Chiarelli, is that this has not happened in Manitoba. It simply has not happened. Those people who have used it are people who have had a bona fide reason to use it.

Do not forget that it requires that you shut down on another day. That is what the Sabbatarian exemption requires, that you shut down on another day. It requires that if you have two or three stores, you shut them all down on the other day.

Mr. Chiarelli: Could you stand up and tell the owner of the store that has eight employees that he cannot go to church on the day of his choosing? Stand up in the Legislature and say that.

Mr. Hampton: We are not saying that. If you are large enough to have seven employees, if you are large enough to have seven people in the store, then I would say you are probably large enough that you can go to church on that day or you can—

Mr. Chiarelli: Why not make it five? Why not make it eight?

Mr. Hampton: You have to set a limit somewhere. In Manitoba, the limit is somewhat smaller than this and it has worked effectively. I would argue it has worked much more effectively than what the government is

proposing here by going around and asking people to declare a religion or going through the absurdity of asking a corporation to name a religion.

Mr. Chiarelli: I guess it is the lesser of two evils.

Mr. Chairman: All right. Are we ready to vote? Oh, Mr. Farnan.

Mr. Ballinger: Are we voting, Mr. Chairman?

Mr. Chairman: I thought we were. Mr. Farnan has arrived. You were in the House and we held down one of your amendments. Mr. Farnan is going to speak.

Mr. Chiarelli: He just got back from the library. He is going to read to us again.

Mr. Chairman: Now, now. He was speaking in the House.

Mr. Farnan: I was particularly interested in and excited about the exchanges that have taken place between my colleague and Mr. Chiarelli. Indeed, it raises a very interesting point. I do, after some reflection, tend to support my colleague the member for Rainy River (Mr. Hampton), whose insight is generally very focused and sharp. In this particular case, I believe once again he is demonstrating his ability to see the problem very clearly.

In his statement, Mr. Chiarelli was looking to the New Democratic Party for perfect wisdom, and of course, we never ever claimed to have that. We may be closer to the angels than most, but as yet we are not the angels. But it is a fact that in Manitoba we have experience of this type of process at work.

I suggest once again to the committee that maybe, without taking up too much time, we could postpone voting on this item and have some of that impact knowledge, impact data that we encouraged the government on various occasions to look at, before rushing headlong into making a decision. That, of course, is one of the reasons why I suppose New Democrats have traditionally had more depth of insight, in the sense that we have been prepared to look at impact studies before coming to quick conclusions. As we suggested to you, there are impact studies in various jurisdictions in Canada and the United States.

This is another example where if we were to postpone debate on this—I do not know, Mr. Chairman, if I am permitted to move a motion to postpone this. Maybe I could ask your direction on that.

Mr. Chairman: A motion for deferral is always in order; it is nondebatable. Those in favour of deferral?

Mr. Farnan: No, I have not come to that point yet.

Mr. Chairman: Oh.

Mr. Farnan: I am just trying to bring myself logically to the position where I might move that kind of motion. It struck me that these impact studies my colleague from Rainy River refers to are not in our possession. While I know all my colleagues here would trust my esteemed colleague to refer accurately to the findings of what is taking place in Manitoba, at the same time it would be much better if this information came

from an independent and neutral source. Then we could all have confidence in it. I would like before continuing to move a motion of deferral.

Mr. Chairman: Mr. Farnan moves deferral.

Mr. Kanter: A recorded vote on this, Mr. Chairman.

1650

The committee divided on Mr. Farnan's motion, which was negatived on the following vote:

Ayes

Farnan, Hampton.

Nays

Ballinger, Chiarelli, Collins, Kanter.

Ayes 2; nays 4.

Mr. Farnan: I will continue then to make the point that it becomes extremely unfortunate if the government members on the committee want to press ahead without having that very important and valuable information—

Mr. Chiarelli: So you want to vote down an unfair amendment.

Mr. Farnan: —with which we could make a quality decision as opposed to a decision that is simply made in haste.

Mr. Ballinger: Another example of muddying the process.

Mr. Farnan: Of course, this is one of the tragedies we face right now. In order to meet the government deadline, a modified form of closure is taking place and the committee is being denied information.

Mr. Chiarelli: Is this also a modified form of a filibuster?

Mr. Kanter: A pretty subtle modification, if you ask my opinion.

Mr. Chairman: Order. I banged on this just to change the tune.

Interjections.

Mr. Chairman: We want to get you home in time for shelling out.

Mr. Farnan: It gives me great pleasure indeed to support my colleague the member for Rainy River in moving this amendment. Even though we are not going to have all the information, I have to, I suppose, ask you very sincerely, knowing the integrity of the member for Rainy River, to please put your trust in the information he has brought before this committee.

He has assured the committee that in Manitoba this type of proposal works. If it works, why would you try to implement something different? With that, I just simply say that I will be supporting the amendment.

Mr. Chairman: Are we prepared to vote? A recorded vote.

The committee divided on Mr. Hampton's amendment, which was negatived on the following vote:

Ayes

Farnan, Hampton, Runciman.

Nays

Ballinger, Chiarelli, Collins, Kanter, Sola.

Ayes 3; nays 5.

Mr. Chairman: I am looking at the clock. I am not sure if it is standard time or daylight time. It being almost six of the clock—

Mr. Kanter: It is only five o'clock, Mr. Chairman; five to five.

Mr. Chairman: What is it in Newfoundland right now?

Mr. Kanter: I have no idea what it is in Newfoundland. Nice try, Mr. Chairman.

Mr. Chairman: I thought it was a shelling-out move. We have a clerk who has young children who will be at the shelling out, and other people who will be shelling out. I have to go home because my kids want their allowance. They want me to shell out.

Mr. Farnan, we adjourned your hand-written memo on the back of an envelope. I am going to read it.

Mr. Farnan: Mr. Chairman, that kind of remark is unbecoming the kind of stature you have been gaining on this committee.

Mr. Chairman: Why? It was the back of a good envelope.

Mr. Farnan: I hate to see you ruin the level of expectation we have come to expect from you. I regret that remark.

Mr. Chairman: I can only attribute it to old age.

Mr. Farnan moved that—this is the handwritten motion, by the way—that section 4 of the—

Mr. Hampton: Mr. Chairman, the amendment that I proposed has been voted down, but I would like to propose a new amendment to subsections 5(1) and 5(2) as set out by the government.

Mr. Chairman: Okay, that is fine. But we are going back to section 4 and—

Mr. Farnan: To deal with that now—

Mr. Chairman: Are you talking about section 4?

Mr. Farnan: The same one we were dealing with.

Mr. Hampton: Since we have just dealt with subsections 5(1) and 5(2) and the government voted down the amendment that I have proposed, I would like to propose another amendment that might be more palatable to some of the government members.

Mr. Farnan: It is a pity they were not here to hear your explanation. It might have swayed them.

Mr. Chairman: I do not have that before me.

Clerk of the Committee: This is the one we just dealt with.

Mr. Chairman: But that has been defeated.

Clerk of the Committee: But what he is saying is that he wants to move an amendment.

Mr. Chairman: All right. We will hear your amendment to that, Mr. Hampton.

Mr. Hampton moves that subsections 5(1) and (2) of the act as set out in section 4 of the bill be struck out and the following substituted therefor:

"(1) Despite any other provision of this or any other act or the bylaws or regulations under this or any other act, a retail business may be carried on in a retail business establishment on a Sunday if the retail business is always closed to the public throughout another day of the week."

Mr. Hampton: If the government finds the limitation to seven so objectionable then we will—

Mr. Chairman: I would have to rule that out of order, I believe. I will consult with the clerk, but we have already voted on the essence and it has been defeated.

Mr. Hampton: With respect, Mr. Chairman, the only opposition I heard from the government side was discussing the limit of seven. That was the preponderance of the argument from the government side and that is what—

Mr. Chairman: I am sorry, Mr. Hampton. I would have to rule that is out of order. It has already been voted on and it was defeated.

Mr. Ballinger: You're supposed to be a lawyer, Howard.

Mr. Chairman: It is not debatable. You have an option. If you wish to challenge the chair you can do so.

Interjection.

Mr. Chairman: Mr. Chiarelli. Mr. Hampton, if you do not wish to do that, we will move on to Mr. Farnan's motion.

Mr. Hampton: I think I will challenge the chair.

Mr. Chairman: All right. A challenge to the chair has been made. It is not debatable. Those in favour of upholding the chair.

Mr. Farnan: A recorded vote, please.

Mr. Chairman: A recorded vote is called for.

The committee divided on the chairman's ruling which was agreed to on the following vote.

Ayes

Ballinger, Chiarelli, Collins, Kanter, Sola.

Nays

Farnan, Hampton, Runciman.

Ayes 5; nays 3.

Mr. Chairman: We will move on to Mr. Farnan's amendment which we stood down.

Mr. Farnan moves that section 4 of the act as set out in section 4 of the bill be amended by adding thereto the following subsections:

"(2a) Despite any other provision of this act, no retail business establishment located in a shopping mall may open on a Sunday.

"(2b) In this section, 'shopping mall' means a group of two or more stores that maintain a common parking lot for patrons of those stores."

Mr. Farnan: Just let me orient myself here, Mr. Chairman, because this has come upon me very suddenly.

Mr. Chairman: Would you like us to move on to Mr. Runciman?

Mr. Farnan: Yes, I would really—

Mr. Chairman: All right. Mr. Runciman, would you like, or any other member—

Mr. Farnan: Is this related to this motion or another motion?

Mr. Chairman: No, this is with reference to your motion.

Mr. Farnan: Okay.

Mr. Chairman: While Mr. Farnan is collecting his thoughts on this, does any other member wish to speak to this matter? No? Seeing none—

Mr. Chiarelli: When I look at this motion, Mr. Chairman, I wonder if Mr. Farnan is going to be able to speak to it, with his tongue so firmly in his cheek.

Mr. Chairman: Thank you, Mr. Chiarelli.

Mr. Farnan: Okay, I have it now.

Mr. Chairman: Mr. Farnan?

Mr. Farnan: Yes, all right. I am moving that section 4 of the act as set out in section 4 of the bill be amended by adding thereto the following subsections—

1700

Mr. Chairman: Mr. Farnan, I would not want to interrupt you but the rules call for the chairman to read the motion. I have read it and am now asking you for comments.

Mr. Farnan: Yes, and I feel that this is so important that it becomes an integral part of my statement to the committee and it would be amended in this way, Mr. Chairman:

"2a. Despite any other provisions of this act no retail business establishment located in a shopping mall may open on a Sunday.

"2b. In this section, 'shopping mall' means a group of two or more stores that maintain a common parking lot for patrons of those stores."

Now on the advice of the clerk, I am going to suggest that "shopping mall" would be defined in another area of the bill. Is that correct, Mr. Chairman?

Mr. Chairman: There probably should be a definition in the opening definitions.

Mr. Farnan: Therefore—

Mr. Chairman: So you are just going to be dealing then with subsection 2a.

Mr. Farnan: I am going to deal with subsection 2a.

Mr. Chairman: You are withdrawing subsection 2b for the moment.

Mr. Farnan: Only in so far as the definition of a shopping mall would be part of my presentation. In that light—

Mr. Chairman: Actually, legislative counsel has indicated that because it is only used in this proposed subsection, it can remain, so you can leave subsections 2a and 2b.

Mr. Farnan: That is excellent, Mr. Chairman, because it then correlates very directly and I think all of the members of the committee will appreciate that we have been discussing it in unison and we will have a much broader and wide-ranging discussion of the issue.

Mr. Chairman: Yes.

Mr. Farnan: The government of Ontario on innumerable occasions as this issue has been brought up in the House—I believe in the briefing documents that members received, they were told not to talk about Sunday shopping legislation or Sunday work legislation, Sunday openings. The phrase that was often used was Sunday closing or store closing. Indeed, on occasion, I would say that was the implied thrust of the government.

It may be that members will argue that was not the intention of the government at all, but I can assure you that individual members of the government—and, indeed, some very prominent members—have talked about the concept that this legislation would be closing legislation and not opening legislation.

To some degree, in my humble way, I am trying to assist the government in devising legislation that would address the concerns of the many individuals in the province, concerns that indeed we are talking about open Sunday shopping. Of course, whenever that has been mentioned and delegations have appeared before the committee and they talked about open Sunday shopping, I can recall my colleague, the parliamentary assistant, Mr. Kanter, saying, "No, you know this legislation is not about Sunday opening, this is closing legislation."

Mr. Chiarelli: How about roping-off a parking lot?

Mr. Farnan: Would you like to comment further on that so that it may be a valuable comment I can incorporate into my presentation?

Mr. Ballinger: Only if the rope is dangling.

Mr. Farnan: Or was it just a throwaway line, not a serious suggestion? I always take your comments with a grain of salt.

Mr. Chairman: Could we get back to the motion—

1710

Mr. Farnan: —because I have learned to respect the kind of interjections you make, Mr. Chiarelli, and because of that, when you throw out something like that it forces me to rethink my position, but if you ...

Mr. Chiarelli: It was not a serious comment, but only a comment.

Mr. Farnan: If you are really are not interested in roping off parking lots I certainly then will not include it in my presentation.

Mr. Chiarelli: But, is that not a way to get around your particular amendment?

Mr. Farnan: Mr. Chairman, I do believe that Mr. Chiarelli is comparing roping off parking lots with a very serious amendment that I am introducing.

Mr. Chiarelli: It is a loophole. It is a serious loophole in your amendment.

Mr. Farnan: I really am disturbed—

Mr. Chairman: I am not really interested in roping off parking lots. I would like you, Mr. Farnan, to get to the issue at hand and address it with reference to what is before us.

Mr. Farnan: We have to look at ways, as we work through this bill clause by clause, to see if we cannot attempt to meet the genuine concerns that were brought to us by retail workers, by small and large businesses, by civic politicians, and by church groups. They do not want Sunday shopping. They do not want Sunday work. They would prefer to maintain a common pause day and I think always, that was qualified by a statement "in so far as it is possible." We know that delegations appearing before us never for one moment envisaged that we would close down the province completely, as the legislation purports to do, saying, "Well, we close everything and now it is up to the municipalities to open it." The insight of all of those groups appearing

before us was that, "This legislation is in fact legislation that will take away from us the common pause day, that will result in wide open Sunday shopping, that there would be a domino effect and that over time..."

Mr. Chairman: Mr. Farnan, I am going to ask you to move your comments towards the amendments that you have made, which is in fact that a shopping mall may not open on Sunday and the nature of the shopping mall. I think your comments are far beyond that.

Mr. Farnan: Mr. Chairman, I appreciate your pointing that out, but on this particular occasion, I would beg to have your indulgence as I pursue this line of argument because what I heard on the tour of the committee as we went around the province, I believe that the views of the people of Ontario as they addressed the committee must have relevance as we deal with these clauses. The comments that I am making as to what we heard from these delegations affect this particular clause. I am hoping that in touching on the comments that were made by these delegations, I will rekindle in the minds of my government colleagues the memory of the passion and the sincerity with which all these groups came before the committee.

Mr. Chairman: I have no difficulty with that, Mr. Farnan, except that your amendment is specifically related to shopping malls and what we would like to hear from you as relevant would be why a shopping mall might not open on a Sunday and as to your definition of "shopping mall." You are not addressing it with reference to all other people out there, outside of the mall. If you were doing that it would be relevant to go through all of this about Sunday shopping but you are not. I am going to direct you more specifically to the question involved.

Mr. Farnan: Thank you, Mr. Chairman. That final explanation of yours does indeed, I think, have relevance and as a result, I will attempt to focus more directly vis-à-vis shopping malls and shopping mall owners.

Often, during the hearings, we heard the question raised to us, "Who is in favour of this legislation?" Indeed, Mr. Chairman, the answer that was often given to us was the mall owners, the very large mall owners. Indeed, when we take that into account, it is hard to find any other group other than the Liberal government and the very large mall owners who have been promoting this legislation.

I would say to you that the tenants of these malls who appeared before us were uniformly opposed to the bill. There was one franchised national store within a mall that came before the committee and said it would support it. But by and large, the tenants of malls who appeared before the committee were saying: "We don't want this. We don't want to be in a position where the mall would be able to force us to work on Sundays. We know that if we are not national and we do not have clout, that the mall owners and the landlords will be able to put pressure on us even with the provisions of least protection that the government might hope to include within the legislation."

This legislation, I think, emanates in its source from those individuals who are mall owners. Certainly, it has its opposition from tenants of malls who are opposed to this legislation. Let me say that when business improvement area associations, retailers—even national chains such as Canadian Tire that are independent franchises—came before us, they very clearly were looking at the large malls, the big department stores, as the driving force that would ultimately impact upon them.

There is no question about one of the expressions that rings so clearly in my mind. I can remember very vividly a retailer appearing before this committee and saying, "Not to open when our competition is open would be retail suicide." We heard business improvement area associations appearing before this committee who talked about the impact the opening of malls would have on the downtowns of communities and by and large they were often saying it was ironic that a government that purportedly supported the revitalization of downtowns through other programs is, by this particular piece of legislation which would allow malls to open on a Sunday, actually working against the economic viability of those very downtowns.

Indeed, shopping malls are at the heart of this legislation. The big business fans of the Liberal government, with influence in the inner circles of the government, no doubt were able to convince a government that had previously said it accepted the recommendations of the all-party task force committee, a government whose Solicitor General (Mrs. Smith) had said the municipal option was the chicken way out. These powerful forces centred in the shopping malls were able to change an entire government's thinking.

That is extraordinary. I think the people of Ontario should be aware of the power with which the powerful financial interests behind shopping malls are able to manipulate the political system, to such a degree that a government that was opposed to this particular type of legislation, all 48 members of its minority government—lo and behold, the machinations of these dark and sinister forces transformed those 48 votes who were opposed to the municipal option into 94 government members who have changed their minds.

Mr. Chiarelli: Saw the light.

Mr. Farnan: En bloc.

Mr. Chiarelli: Saw the light.

Mr. Farnan: They saw the light and they followed the light and they were doomed. No, Mr. Chiarelli, you did not see the light. If, indeed, the people of Ontario could be convinced—

Mr. Chairman: Could we get back to the mall?

Mr. Farnan: Mr. Chiarelli brings out the worst in me, as you can probably see.

Mr. Chairman: I am trying to bring out the best in you.

Mr. Farnan: And indeed you do, Mr. Chairman. I am always grateful for your interjections because unquestionably and invariably as a result of your directions from the chair, I think you do bring us back on track and it is much appreciated.

As I was saying, the powerful forces of these financial groups, these powerful, sinister forces behind—

Mr. Chairman: No one will have any difficulty when reading this transcript knowing it was Hallowe'en when this was all done.

Mr. Farnan: —the change of heart of the government certainly is something that the people of Ontario are angry about. My colleagues will recall, as we travelled the province, the plea that was heard over and over

again, "Why are you doing this?" What we saw, as my good friend the member for Durham East (Mr. Cureatz) consistently pointed out on the committee, was the most extraordinary alliance that I have ever seen and that I am sure anybody on this committee has ever seen. The most extraordinary political alliance took place around this issue of a common pause day.

1720

Mr. Chiarelli: How many said to close down the malls?

Mr. Farnan: The mall owners with their friends in government were able to persuade their friends in government to push on with this legislation that will have just an extraordinary impact on the people of Ontario.

Mr. Chairman: Thank you, Mr. Farnan.

Mr. Farnan: No, Mr. Chairman, those was but my introductory remarks.

Mr. Hampton: It is Hallowe'en, remember? It is trick or treat time.

Mr. Chairman: You are almost in full flight. The vacuum cleaner is moving or the—

Mr. Ballinger: Do you not feel any shame whatsoever?

Interjection: I am very disappointed to hear that I bring out the worst in him.

Mr. Chairman: Mr. Ballinger, are you appearing before us or are you sitting on this committee?

Mr. Ballinger: I feel like a debutante.

Interjection: Debutante? Did you say it is your coming out party? You come out every Hallowe'en?

Mr. Ballinger: Are you going to be over at the St. Charles tonight?

Mr. Chairman: I want you to know, Mr. Ballinger, that you do not have a chance of winning the contest.

Go ahead, Mr. Farnan. Are you there, Mr. Farnan?

Mr. Farnan: Yes.

Interjections.

Mr. Chairman: I am sure Hansard appreciates this lapse.

Mr. Farnan: I want to look at some of the reasons members are not in favour of Sunday shopping.

Mr. Chairman: No, not unless—I think we should get back to the issue of what is relevant with reference to subsections 2a and 2b and that is why you feel there should be no Sunday shopping in malls. I think you have already given us a great dissertation on that, but I would like to hear more on that.

Mr. Farnan: Maybe you misinterpret the word "members." When I talk of members, I am referring to members involved in—

Mr. Chairman: Malls?

Mr. Farnan: Malls, individual stores that are involved in malls and naturally, their fears become very relevant. Some of the reasons presented by the Thunder Bay Chamber of Commerce why its members—this is a result of a survey. Thunder Bay businesses were opposed. I think that is very relevant and I think we should look at those reasons.

Mr. Chiarelli: Good point.

Mr. Farnan: The first of these reasons is fear, fear that some retailers will not have the choice on Sunday openings because of lease arrangements in malls and requirements to meet competition, and it is a good point when you reflect on it. It is a good point. I am glad Mr. Chiarelli believes it is a good point because Mr. Chiarelli will have a chance to vote on this.

Mr. Chiarelli: How long will that be?

Mr. Farnan: Having agreed with the arguments, I hope that Mr. Chiarelli, after he has concluded that indeed these are all good points, will vote appropriately.

Mr. Chairman: We will be doing that in the 34th or 35th Parliament. Go ahead. I should not have said that.

Mr. Farnan: The next argument that was put forward by these fine businessmen and women was that consumer prices may indeed increase because retailers will have increased operating costs. Now, I want to look at that vis-à-vis the mall and the small businesses. For the mall owners, as you are well aware, there is much more flexibility, for these large malls to move their staff around, to hire part-time staff, whereas when we look at the small retailer, very often, the argument these retailers put forward was that what was important to them was the quality of their service, that personal service was very important, that people who worked in the smaller stores tended to be individuals who provided more than just a sale, and they felt this particular situation would result in concerns vis-à-vis staffing.

They also felt consumer prices would increase. These can be absorbed to some extent by the malls, because as you, Mr. Kanter, and all the members of the government party well know, what we are talking about is a change in the market share. It is not simply whether stores open and close. The underlying reason these malls want to pursue this particular direction is that they will grab a larger share of the pie.

Once again, my colleagues, I say to you that there is a database in other parts of Canada and there is a database in the United States that will in fact substantiate the argument I am making. Sometimes data are used to develop one's own particular position, and indeed the advocates of Sunday shopping will say that sales rose by X per cent. But of course, if you keep track only of what is happening in the malls, the malls may increase, but there is a consequent decrease of sales in the smaller stores in the downtowns.

Mr. Chiarelli: Convenience stores would hang you from the highest post if you got this amendment through.

Mr. Chairman: Go ahead, Mr. Farnan.

Mr. Farnan: Sunday shopping, said these merchants in Thunder Bay, will adversely affect the quality of family life.

Mr. Chiarelli: I thought the NDP supported small business. At least, that is what they claim.

Mr. Chairman: Go ahead, Mr. Farnan.

Mr. Farnan: Is the quality of family life the raison d'être of the shopping mall entrepreneurs? I ask you seriously, is the quality of family life the major interest of those large corporations that run the shopping malls? Is that what they are all about or is the bottom line and their major concern the profit margin? Small stores are different from large stores, because in small stores it is more than just an employer-employee relationship. It struck me very much as I listened to the small businessmen of this province talk about the relationship they had with their employees. They were not just employers and employees, but friends, people working together, people who are an integral part of the communities they serve.

Mr. Chiarelli: Do you know how many would lose their jobs with this amendment?

Mr. Ballinger: Were you there the day the guy pulled up in his big Mercedes Benz and the diamonds all over?

1730

Mr. Farnan: My colleagues, I put it to you that the most fundamental message we received in terms of maintaining a common pause day was the effect that this would have in eroding the quality of life of the citizens of Ontario. True, many individuals appearing before the committee said that the sun would not fall from the sky when this legislation was passed, but they did say that over time—one year, two years, five years—it is this sort of legislation that will undermine the social fabric, the traditional values that we in Ontario cherish so dearly.

Mr. Chairman: I would like to get you back to the malls, and I would like you to get back there without just mentioning "mall."

Mr. Farnan: Let me say that the efforts of the malls to pressure the government to move this type of legislation will result in the undermining of these traditional values, the quality of life. How well we must all remember, I believe it was the Anglican archbishop of the diocese of London who used that beautiful expression—

Mr. Chairman: Was he referring to shopping malls? I am going to bring you back to malls again.

Mr. Farnan: He was referring to the concept of quality of life, which I just explained to you is affected by the actions and the efforts of the shopping malls to push forward this legislation, and to which the good

archbishop of the diocese of London was referring when he made that wonderful comment about the need for green spaces in people's lives.

I thought it was a beautifully crafted phrase. I think it really speaks to the heart of this issue, that this government is prepared to get involved with the shopping malls in the hurry-hurry, bustle-bustle, profit-profit, ongoing merry-go-round. It is prepared to throw in its lot with the shopping malls and to exchange one set of values for another. But the people of Ontario are saying to the government: "Please don't take on the value system of the shopping malls. Please listen to us. We are here before you because you have this committee. You have sent it around the province. Don't take on the value system of the shopping malls."

Mr. Chairman: We have to have some relevance here, and your statements are certainly very generally related to the question of the issue of this bill—

Mr. Farnan: I thank you very much for that kind comment.

Mr. Chairman: —but they are not dealing with subsections 2a and 2b, which are your amendments, and I would like you to bring yourself within the parameters of those sections, as relevant.

Mr. Farnan: I would argue the case that this is all very relevant, and I appeal to your fairness. I have to say that you have been very kind. Where I have been out of line, I have acknowledged your interjection, but at the same time—

Mr. Chairman: Flattery will get you no place.

Mr. Chiarelli: It makes a good argument to send out to all those who came before us.

Mr. Kanter: All convenience stores would be interested in this one.

Mr. Chiarelli: I think a lot of groups would appreciate seeing the arguments that are being used in favour of the motion.

Mr. Chairman: Mr. Farnan, go ahead, but I think, as a matter of relevance, let's explain why you have moved these amendments and not get into the general statement of the issue.

Mr. Farnan: The Thunder Bay Chamber of Commerce, again responding to this general thrust dictated to us by the shopping malls—whether you like it or not, Mr. Chairman, I come back to what I believe is a fundamental point. In the eyes of the people of Ontario, they are saying to themselves, "Why is that nice man, the Premier, Mr. Peterson, that nice man who travelled the province with his tie down and his sleeves rolled up and who said, 'Look, I'm available, I'm approachable, I'm open, I'm accessible,' why is this man who campaigned on open and accessible government listening to a vested interest group of mall owners but not listening" to all of the groups I have mentioned and my colleagues have mentioned time and again, the churches, and I repeat, every possible denomination. We had the Catholic Church, the Anglican Church, the Lutheran Church, the Latter-Day Saints, the Dutch Reformed church—

Mr. Chiarelli: They all said, "Close down two-store malls."

Mr. Farnan: There were so many of the churches that appeared before

us, but I think we could say that church groups of every denomination appeared before us and their message was the same.

Mr. Chairman: I am going to rule you out of order very shortly, because what you are doing is just repeating the general purpose of the bill. You are not addressing your comments. You have the perfect opportunity to speak as long as you like as long as you bring yourself within the confines of subsections 4(2a) and 4(2b). If you continue to repeat over and over, I am going to rule you out of order.

Mr. Farnan: Okay. I shall try to be—what would you call it—less meandering in my comments and move along quickly, but I do want to touch on all these points.

Mr. Chairman: As long as you meander within the framework of 2a and 2b, you can meander from now until the cows come home, but if you go outside of 2a and 2b, I am going to rule you out of order.

Mr. Farnan: Okay, thank you, Mr. Chairman.

I am going to come back to 2a in a moment, but I do want to talk about the definition of a shopping mall, because certainly I would be prepared to look at and consider an amendment to what I have here. Mr. Chiarelli did give a proposal in terms of roping off a parking lot as being—

Mr. Chiarelli: A loophole.

Mr. Farnan: —a part of a suggestion, but I would like to stay with more serious suggestions.

I want to read to the committee a research document that was prepared by the legislative research service concerning the definition of a shopping mall. As I said, while I would want support of 2a, I would be prepared to accept an amendment to 2b.

??"Further to your request for a definition of a shopping mall, we have conducted a search for this term and the related phrases 'shopping centre' and 'shopping plaza.' Although no definitions were found for either shopping mall or shopping plaza, one Canadian and several American statutory definitions of shopping centre were found. The phrase 'shopping centre' was also considered in a number of American occupiers' liability cases. These various definitions and the context in which they are used are set out below."

I would encourage my colleagues to listen carefully to these definitions. It may be that there is a favourite that we might agree on as being the most suitable for this particular piece of legislation. I chose this particular one for reasons that I will expound upon later.

1740

I am going to have to ask the legislative research service for some assistance as I go through this because there are some very interesting things here that I am not too sure that I quite understand.

??1. "Shopping centre" means any development of land, planned and controlled as a unit, having an area of at least 6,000 square metres and containing retail stores, offices, or service shops, or other similar establishments in a unitary type building or buildings of at least 1,500

square metres in floor area.

The Vice-Chairman: Mr. Farnan, are you stating how you arrived at your definition?

Mr. Farnan: Yes. That is why it is important that we look at all of these, so that I can give you the reasons I excluded them and then decided on the particular definition that I decided upon.

The Vice-Chairman: Thank you.

Mr. Farnan: "The purpose of the act is to provide for the establishment of—" I am wondering if I could just sit over by the legislative assistant for a moment. I would like to go through—

Mr. Kanter: I think that the member has an ulterior motive in his presentation this afternoon. He just wants to sit beside the researcher.

On a point of order, Mr. Chairman: Mr. Farnan has presented a motion to us with a definition of shopping mall. I think it would be entirely in order for Mr. Farnan to explain or elaborate on that motion that he made, even in passing, possibly referring to alternative motions. However, I do not think it is relevant for this committee to hear a lengthy shopping list of definitions of shopping centre.

I would request you to consider directing Mr. Farnan to confine his remarks to the motion before us, rather than motions which he has considered and not put before us.

The Vice-Chairman: I raised that issue with Mr. Farnan several minutes ago. He indicated that his response to my point was that he is telling us how he arrived at his definition. I think that is relevant to the motion.

I am making that ruling at least on an interim basis. If, in fact, it indicates that he is leading us on a train of thought which indicates how he arrived at his definition, then we will have to permit him to continue. Mr. Farnan, would you continue?

Mr. Farnan: May I say, Mr. Chairman, that is a most fair ruling under the circumstances of what might be considered by some as pressure from the parliamentary assistant.

The Vice-Chairman: Your acquiescence in my comment included my word "interim"?

Mr. Farnan: "Interim" meaning?

The Vice-Chairman: "Interim" meaning that we will reserve judgement on it as we proceed.

Mr. Farnan: Thank you. The committee has looked at the concept of square metres in other areas of the bill. However, I did not find this to be particularly appropriate. I would also like to include in your ruling my statement of my willingness and my openness to amendment of subsection 4(2b).

Therefore, in that light, I am going to move to subsection 4(2a). I am open to suggestions for subsection 4(2b). I can be quite honest with you, fellow committee members. If it had not been for the outstanding research of

our legislative research officer on this committee, I would not have been aware of the various options available. I would hope that the committee would want to look at this, all of the various options the research assistant has come up with.

The Vice-Chairman: I would not include that in my ruling, because we have before us now subsections 2a and 2b and we do not have any amendment to your amendment before us, so I would want you to restrict your comments to either 2a or 2b and not to any amendment which may be proposed down the road.

Mr. Farnan: But surely, Mr. Chairman, when I was speaking, even you yourself, if I might say so, made some derogatory remarks with regard to 2b while you were sitting as a member of the committee and not in the chair. Given that fact, is it not fair that if 2a is a reasonable motion, we can look at the various alternatives? After all, the research officer hired by this committee does excellent work, and I just want to share that work with the committee.

The Vice-Chairman: We have 2a and 2b before us. I think your argument is relative to 2b and I would ask you to continue. I do not think we should debate hypothetical amendments to your amendment. If in fact an amendment ensues as a result of your discussion on the actual motion, then we can deal with it at that time.

Mr. Farnan: In that case, it probably is not necessary for me to sit here any longer, much as I would like to. Therefore, with your permission, I will take my normal place at the committee table.

The Vice-Chairman: Be my guest.

Mr. Farnan: Thank you.

The Vice-Chairman: Are you going to continue with your debate?

Mr. Farnan: Absolutely. Okay. Here we are. The definition I chose—"In this section "shopping mall" means a group of two or more stores that maintain a common parking lot for patrons of those stores"—was perhaps the most extreme scenario. I admit that quite readily. I presented it and am presenting it as a challenge to the government, to test the sincerity of this government, that it really is interested in closing legislation, as has so often been said. I and my colleagues believe that perhaps the real purpose is dumping legislation on to the municipalities. While I am going to address my remarks to this particular subsection, this particular definition in 2b, I want to go on record that should subsection 2b be defeated, I wish to have as amendments—

Mr. Kanter: To be or not to be, as it were.

Mr. Farnan: A literary man. It is always a pleasure to work with people who are immersed in the arts. Mr. Kanter is such an individual, and I have to say I have always admired working with him because of that.

Mr. Chairman: That is the class he spent six years in, 2B.

Mr. Farnan: But I think Mr. Kanter was talking about the possibility of a seat in cabinet perhaps when he talked about to be or not to be. Of course, that depends on the way this legislation is handled. I want to say that I have felt kind of a minor closure at work, a sense of closure at work

within this committee that is unfortunate.

Mr. Chairman, I do want to make the point that should subsection 2b be defeated, I would want—

1750

Mr. Chairman: You are anticipating what the vote might be, Mr. Farnan. You never know.

Mr. Farnan: I have been doing my count, you know. I also have a great sense of being able to pick up vibrations.

Mr. Sola: Of doom.

Mr. Farnan: My instincts at this particular moment in time are leading me to believe that perhaps there will not be a unanimous vote.

Mr. Chiarelli: Keep working on it. There is still hope.

Mr. Farnan: Indeed, I have a feeling that the issue could be very narrowly defeated. However, I am hoping that with the quality of the debate and the arguments that I will present, I will be able to persuade—

Mr. Chiarelli: At least two of us.

Mr. Farnan: —Perhaps two members of the government to vote with me and, in that way, to send a message to the people of Ontario—

Mr. Chairman: It being six of the clock—

Interjection.

Mr. Chairman: It must be. Either that or it is a fire. We stand adjourned until after routine proceedings tomorrow. Sorry, Mr. Farnan.

The committee adjourned at 5:52 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

Tuesday, November 1, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Hart, Christine E. (York East L) for Mr. McGuinty

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, November 1, 1988

The committee met at 3:43 p.m. in room 228.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Chairman: We have a quorum of the most important people. We were dealing with Mr. Farnan's amendment. He adjourned the debate. I am sorry—Mr. Runciman.

Mr. Runciman: This is a procedural question. I know Mrs. Cunningham is going to be along shortly. We had a concern—I am not sure about how this fits in procedurally—about the placement of the committee hearings. I am not sure if this was discussed at a previous meeting with no decision taken. I understand that from a brief conversation with Mrs. Cunningham this afternoon. I am not sure whether it requires a motion or what is necessarily required procedurally for the clerk's office in terms of making the necessary arrangements to hold the remainder of the committee hearings and deliberations on this bill in the Amethyst Room—

Mr. Chairman: I think you are quite right. That was raised.

Clerk of the Committee: Just to refresh your memory, the issue was raised in committee. We discussed meeting in room 151. I explained to Mrs. Cunningham at the time that this committee traditionally meets in room 228. That is why we were scheduled to meet here.

If the committee wants to meet in room 151, yes, I will need a motion and then we will try to arrange to have the committee meet in that room. The proceedings are not televised live. The committee proceedings in room 151, while the House is in session, are run on Fridays.

Mr. Runciman: A procedural question then: When is the appropriate timing for such a motion?

Mr. Chairman: You can move it any time you like, really, if Mr. Farnan is prepared to relinquish the floor for a moment.

Mr. Runciman: His motion is still on the floor. I am just wondering if we could not continue with Mr. Farnan's motion. Once it is completed, Mrs. Cunningham will be here as well. I know she has some views she wishes to contribute to that particular discussion. Perhaps that would be a more appropriate time to deal with it. Either Mrs. Cunningham or myself can make the motion at that time, if you are in agreement with it.

Mr. Chairman: Is there unanimous consent to deal with it in that way?

Mr. Kanter: I certainly do not mind if the motion is introduced, either by Mr. Runciman or whomever. I think we might want to possibly defer

consideration of that motion. I, for one, do not know what other committees are meeting or what committees we might be displacing. I think there is some information that I, personally, would like to have before I vote on this matter. While I would not object to having it introduced, I would like to defer consideration of it until perhaps the next session of this committee.

Mr. Chairman: All I am asking for is unanimous consent that Mr. Runciman could introduce the motion.

Mr. Kanter: No problem with introduction.

Agreed to.

Mr. Chairman: As I understand it, and the clerk can correct me, we do not have control over what rooms we sit in anyway. It is up to the Legislative Assembly, I believe. Is that right?

Clerk of the Committee: The committee can request to meet.

Mr. Chairman: We can request it, but it is still up to the Legislative Assembly. That will solve your problems in terms of who is meeting there. If there are other people meeting there, obviously we cannot, unless we are prepared to double up with them. I do not think that would be a wise move. We have enough trouble trying to deal with it singularly.

Mr. Runciman: By the Legislative Assembly, who are you talking about?

Mr. Chairman: Is it not the Speaker's office?

Clerk of the Committee: I will have to check this. I believe currently the standing committee on social development is sitting in room 151 on Monday and Tuesday.

Mr. Runciman: Doing estimates of the Ministry of Colleges and Universities.

Clerk of the Committee: Yes. Because room 151 is the assigned committee room for that committee when the House is in session, if this committee wishes to sit in that room, then the chairmen would have to get together and come to an agreement. If that does not work, it is then referred to the Clerk's office.

Mr. Chairman: We have unanimous consent that you can introduce the motion after we are finished with Mr. Farnan. I guess it can be argued at that point whether we discuss it, debate it, whether it is deferred or what.

Section 4:

Mr. Chairman: Mr. Farnan, you were debating your motion. I would only reiterate what I said yesterday, that if you stay within the confines of the amendment, I will not rule you out of order. If you do go beyond the confines —

Mr. Farnan: I must keep that amendment in front of me.

Mr. Chairman: —I will rule you out of order.

Mr. Farnan: I am sorry.

Mr. Chairman: Do you need a copy? We have a copy here. The clerk will give you one.

Mr. Farnan: I want to emphasize some of the points I was making yesterday by going to relevant sources that would substantiate those points. One of the points I was making was that, indeed, it would be shopping malls that would be the beneficiaries of this legislation, Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act.

When the corporation of the town of Orangeville appeared before the committee, in its presentation, it raised this question. It referred to members of the government. It says, "The question they have not asked themselves is who really wants this legislation?" Then they go on to answer that more or less rhetorical question. They say, "The lobby groups from the big plazas."

I just selected that one quote, but it is a recurring theme. I could have selected 35 or 40 different delegations or presentations, but in keeping with the spirit in which the chairman asked me to proceed and in the interest of brevity, I just selected the one quote from the corporation of the town of Orangeville.

On another occasion, All Saints' Anglican Church of Peterborough, and again it reinforces a point I was making, had this to say in its presentation. "It seems to me that the legislation has been drafted and presented to the Legislature because the government has been unable to say no to a very sinister lobby of money and power." I suggest to you that it is not a sinister lobby of money and power; it is indeed the lobby groups of the big plazas.

I think this motion does zero in. We are talking about the shopping malls. By and large, despite the definition that is included in subsection 4(2b), the shopping malls, as we know them, are the homes of those large lobby groups.

I want to re-emphasize that my argument does not hinge upon the definition as contained in subsection 4(2b). I merely brought forward subsection 4(2b) as a starting-off point by which the committee could put our collective minds to work to come up with a definition that would be more agreeable and that could find common agreement.

1550

Mr. Chairman: Okay.

Mr. Farnan: "Who wins?" is a question that was asked by the United Food and Commercial Workers International Union, Local 175 and Local 633. Some of you may be familiar with this document, Sunday Shopping is not a Family Affair. I believe it was distributed to all members of the committee. It raises, in a question-and-answer form, very pertinent matters of interest to retailers and workers, naturally with some emphasis on workers. One of the questions it asks is, "Who wins?"

Let me give you the answer, the winners. Large mall developers such as Cadillac Fairview benefit the most, since Sunday shoppers tend to shop in the larger malls. Mall owners typically get a percentage of all sales—seven per

cent on average—and it will not be the shareholders who are working on Sundays. Large, big city newspapers such as the Toronto Star favour Sunday shopping because of the potential for higher advertising revenues. I think that is something I did not mention.

Mr. Chiarelli: Why do you want to close down a little bookstore in a small strip mall? That is what your motion does.

Mr. Farnan: As I said earlier—perhaps I can repeat it for Mr. Chiarelli's enlightenment because he missed the point the first time.

Mr. Chairman: I think we have heard it.

Mr. Chiarelli: You did not answer the question.

Mr. Chairman: Mr. Chiarelli should not be interjecting.

Mr. Ballinger: Quit blaming Mr. Chiarelli. Mr. Farnan does not have a point to make.

Mr. Chairman: Mr. Chiarelli, interjections are out of order. You will get your turn.

Mr. Farnan: By your leave, Mr. Chairman, Mr. Chiarelli has intimated by his interjection that my motion is geared simply to very small strip malls where there may be just a few stores in that mall. I repeat for Mr. Chiarelli's enlightenment that the definition in subsection 2b was simply placed there as a starting-off point for discussion. What I want Mr. Chiarelli to understand is the concept I am putting forward, a very valuable concept if indeed the government is committed to what it says is Sunday closing.

The question and answer that was produced by the United Food and Commercial Workers International Union again reaffirms, from a worker's viewpoint, who it perceive to be the driving forces. We have seen the church groups perceive the same groups to be the driving forces. The civic groups perceive the same groups to be the driving forces.

I have here a brief that was presented by a main street merchant, Rob Gordon of Gordon's Men's Fashion Shop in Stratford. In his submission to the committee he had this to say: "We will then have a situation where malls are promoting heavily to attract Sunday shoppers and the result will be shopping dollars spent in large shopping malls at the expense of the downtown or city stores."

Mr. Ballinger: You are talking about wide-open Sunday shopping. The bill is not about that at all. You do not know what you are talking about.

Mr. Farnan: "Downtown stores will not be able to offer uniform opening and concentrated promotion for Sunday dollars, simply because they will not all be open, and the central business districts cannot afford the loss of these important shopping dollars as many of the small businesses are marginally profitable. The resulting decline will mean empty stores, declining trade, loss of tax dollars and declining property values."

As a member of the Cambridge city council for five years—

Mr. Ballinger: We wish you were still there.

Mr. Farnan: —I am very proud to have been a member of the team that promoted vitality and growth within the downtown core.

Mr. Chairman: Mr. Farnan, I am going to bring you back from chambers to the question that is before us on the floor.

Mr. Farnan: As you may know, there is talk of a large mall being built in Cambridge. The result of that mall—megamall, I might add—regional in type—

Mr. Chiarelli: Is it conditional on Sunday shopping?

Mr. Ballinger: He is not sure what it is.

Mr. Farnan: The effect upon the downtown could be very significant. I think all I am doing is reinforcing the trend that these groups, this very small selection I have presented to the committee today, are suggesting will take place.

Mr. Ballinger: Who is going to make the decision?

Mr. Farnan: The large malls, the lobby groups, the big plazas and the majors, are very conscious of the fact that there is a finite amount of money to be spent.

Mr. Chiarelli: That is not what Sears says.

Mr. Farnan: Because there is a finite amount of money to be spent, and because the movement will be away from the smaller stores to the larger stores, it is obvious that it is in the vested self-interest of those plazas and those majors to promote Sunday shopping.

Mr. Ballinger: I want to pass this cartoon around. It is a politician who reminds me of Mike Farnan. "My opponents call me an airhead and it makes the front page." I would just like to ask my friends in the press, do you call that news?

Mr. Chairman: I consider that is out of order and it is an affront to one of your fellow members.

Mr. Ballinger: He has been affronting me all summer.

Mr. Chairman: He is exercising the rights that are given to him under the rules. Go ahead, Mr. Farnan.

Mr. Ballinger: It is an endurance test to be on the committee with this guy.

Mr. Chairman: Go ahead, Mr. Farnan.

Mr. Farnan: This particular individual, Richard B. Brennan, Canadian Tire dealer from Brockville, talked about precisely the point I am referring to. "Without a doubt," he says, "there is only so much business to be done as retailers. We are currently doing that business in six days. It is crystal clear in my mind that eventually consumers generally will have to pay in the form of increased prices for the senseless and excessive luxury of being able to shop seven days a week."

Mr. Runciman: On a point of order, Mr. Chairman: It should be on the record that the majority of government members are reading the paper during this very valuable contribution to the debate. I might point out that it is USA Today they are reading; the party that is opposed to free trade.

Mr. Chiarelli: We are doing some research. We want to see how many stores are open on Sunday.

Mr. Chairman: That is the first valid point of order I have ever heard.

Interjections.

Mr. Chairman: I rule in favour of you, Mr. Runciman. I think they should not be reading the newspaper. There will be no longer reading newspapers, particularly USA Today.

It is not a point of order, the clerk tells me.

Mr. Kanter: Since we have that on the record, I would just like to point out that fully 50 per cent of the Conservative representation on this committee is absent. I think that is a shocking record. I notice the government has 100 per cent attendance. I would just like to put that on the record.

Interjections.

Mr. Sola: Fifty per cent of the New Democratic Party is missing.

Mr. Chairman: No. Ed Philip sent in a note. He is in Australia.

Mr. Chiarelli: Eighty per cent is absent; 80 per cent of the Tory representation.

Mr. Chairman: Can we get back to the order of the day? Thank you very much, Mr. Runciman, for your point of order. It was interesting, but not a point of order.

1600

Mr. Farnan: Again, this is an advertisement that appeared in many newspapers, by your favourite group and mine, the Coalition Against Open Sunday Shopping. The advertisement says, "Get the facts on wide-open Sunday shopping. Fact 1: Wide-open Sunday shopping could increase prices up to 15 per cent."

Mr. Chairman: Mr. Farnan, referring you back to the amendment again, what does that have to do with 2a and 2b?

Mr. Farnan: You are absolutely correct. I really think this particular quote was out of order and I apologize to the committee.

Mr. Ballinger: What are you doing? What is your objective on this committee here today? What is your sole objective, to waste our time for two hours?

Mr. Chairman: We will find out in the fullness of time.

Mr. Ballinger: We have been finding out in the fullness of time, with the greatest respect, for the last three weeks.

Mr. Chairman: It is his right under the rules to debate as long as he stays within the parameters and does not—

Mr. Ballinger: This is not a debate.

Mr. Chairman: —become irrelevant or repeat what he is doing. He has the right to do that.

Mr. Ballinger: He breathes slow, he hesitates. He is trying to frustrate us all. I just want you to know, Mr. Chairman, I am not frustrated at all.

Mr. Chairman: That is the first time you have ever made us aware of that, Mr. Ballinger. Go ahead, Mr. Farnan. I will make sure a copy of that transcript is sent home.

Mr. Chiarelli: Why do we not agree that he can just say one word every hour and we can all go out for a beer?

Mr. Chairman: Go ahead, Mr. Farnan.

Mr. Farnan: The emphasis, as you so correctly point out, must be brought back to the malls and the majors.

I have here a press clipping from the Toronto Star, and the heading on this press clipping reads, "The Bay, Simpsons Preparing for Sunday Shopping Showdown." You will be shocked—indeed I am sure you are shocked, as we all were—that the Bay and Simpsons vowed to defy Ontario's proposed legislation restricting Sunday shopping once it becomes law.

Mr. Chiarelli: On a point of order, Mr. Chairman: I think he is really off point again. I do not see what this has to do with two-store malls.

Mr. Chairman: It has to do with malls, and I guess his argument is two-way really, but I am going to let him continue. I think it is within the framework. Go ahead, Mr. Farnan.

Mr. Farnan: What the Bay and Simpsons propose to do, just in case any of my colleagues have forgotten, is that they will open a few stores in banned areas as test cases once the law is passed, then "'fight any charges laid against them all the way to the Supreme Court of Canada,' a spokesman for the department store giants said yesterday. 'Don't underestimate us,' said Barry Agnew, the store's vice-president. 'We are prepared to take any route we have to to have inequities in the proposed law removed.'"

What better way, I ask you, my colleagues, than to have built into the legislation a fairness which will define very clearly to the Barry Agnews of this world and to the Bays and Simpsons of this world that there will be equity under the law and that none of these majors will be allowed to open under the legislation that we are proposing? What better way, I ask you again, my colleagues, to reinforce the statements of the Solicitor General and the statements of the distinguished parliamentary assistant to the Solicitor General that indeed we are talking about Sunday closings?

Barry Agnew said, "We are prepared to carry it through to its bitter

conclusions." I suggest that in the piece of legislation that we have and that I am hoping to amend by this motion, we can put the Bays and the Simpsons in their place. We can, in fact, bring equity to the legislation. These are the big boys and they are in favour—they make absolutely no bones about it—of unlimited Sunday shopping. It is true that we are in this position today because they were fed up with the current law, which keeps their stores closed while allowing some of the drugstores, etc., to open.

Mr. Ballinger: Point of order, Mr. Chairman: Can I have the amendment read to me please, the amendment that Mr. Farnan is supposed to be speaking to?

Mr. Chairman: Mr. Farnan moves that section 4 of the act be amended by adding thereto the following subsections:

"(2a) Despite any other provision of this act, no retail business establishment located in a shopping mall may open on a Sunday;

"(2b) In this section 'shopping mall' means a group of two or more stores that maintain a common parking lot for patrons of those stores."

Mr. Chiarelli: But he really does not mean (2b). We do not know what he means.

Mr. Chairman: What is your point of order, Mr. Ballinger?

Mr. Chiarelli: Is this clause by clause or clause by part of a clause?

Mr. Chairman: There is a point of order being discussed.

Mr. Ballinger: The member for Cambridge has been rambling since we got here, for about 15 minutes. I just want to be reassured about what the amendment is and to make sure that he is speaking on topic.

Mr. Chairman: That is not a point of order. I will call him back to order if he rambles outside. He has been on the fringes, but I think it is his right to speak as long as he wishes. If you want to change the rules, that is the way to address it.

Mr. Farnan: I would just like to add, Mr. Chairman, that you were appointed to this job because of the expertise and the confidence that the Premier (Mr. Peterson) had in you.

Mr. Chairman: He did not have a cabinet seat available. Go ahead.

Mr. Farnan: I believe that you are exercising creditable judgement in this matter. Perhaps when Mr. Ballinger has your experience in the House and in committee, this is a post that he too might aspire to. He does, I believe, require a lot of experience before then.

Mr. Chairman: He can meet me outside right after this and I will give it him. Go on, Mr. Farnan.

Mr. Ballinger: As for you, sir, I cannot wait until you and your duck go outside and lay that egg.

Mr. Chairman: I think that is out of order. Mr. Farnan, go ahead. You have the floor.

Mr. Farnan: Further on in this article it is reported: "'Open Sunday shopping will boost Ontario's sales at the Bay and Simpsons by an estimated 10 per cent, or \$30 million. The two chains would add the equivalent of 600 full-time employees to their current staff of 11,000,' he said."

Mr. Chiarelli: How come Sears disagrees with him?

Mr. Farnan: I am glad you brought up that point, because I will want to address that.

Mr. Chiarelli: They do not say sales will increase at all.

Mr. Chairman: Mr. Chiarelli, could you take the chair? I am going to leave.

Mr. Chiarelli: That is one way to shut me up.

Mr. Farnan: I should say the chair has raised a very good point in asking whether I am not in favour of additional full-time positions. I want to address that, but I would like to leave it just for a moment.

The question of this particular motion is to give a voice to all of those retailers who are concerned about the majors in the large plazas. The standing committee heard a presentation from Arden Brooks, Hans Bleeker and Elaine Vasher on August 22 in Ottawa. It contained this paragraph: "187 independent retailers requested time from the committee to be heard on this issue. They were not asked to appear because of lack of time." Now I understand that there were some problems with that. I do not think we need to get into that.

1610

Mr. Kanter: Mr. Chairman, Mr. Chairman—

The Vice-Chairman: Is this a point of order, Mr. Kanter?

Mr. Kanter: Yes, it is a point of order. I think Mr. Farnan is referring to a procedural matter that I believe the—

Mr. Farnan: I think that has been solved. Yes, I agree. I think by including that first line it was in error. I do not think we can withdraw it from Hansard but I would like to put it on the record that it was indeed a procedural matter. I think it was handled very ably and competently by the clerk.

The Vice-Chairman: What are you going to proceed with now?

Mr. Farnan: In the brief they continue by saying: "How many times will you hear from the Bay or Zellers who have stated that they are going to open regardless of what stand is taken on the local option? What concern have they shown for their employees?" I want to—

The Vice-Chairman: Mr. Farnan, when you refer to companies such as the Bay, are you making any distinction between those establishments that may be in a shopping mall and those that may not be in a shopping mall? As you are aware, there are many such establishments which are not in malls and your motion is dealing with malls. Are you going to relate it to this motion?

Mr. Farnan: I thank you for that and perhaps by bringing that point out you actually have demonstrated a weakness in the subsection 2(b) that I put forward. I would appreciate your co-operation in strengthening subsection 2(b) so that we could address precisely the kind of distinction you raised in the clarification which you brought to my attention.

The Vice-Chairman: Whatever is the will of the committee.

Mr. Farnan: Thank you. One of the ironies that took place on the road is the perception among retailers vis-à-vis the opening of malls, because they believe once the mall is open they will be forced to open. They had this to say, in a rather ironic aside, "It is almost humorous to note that the one retail business in which the Ontario government is directly involved will not be affected by this legislation." I refer to the LCBO. I believe the minister responsible for this particular area is on record as saying they will not be opening on Sundays.

The Vice-Chairman: Does that relate to malls?

Mr. Farnan: Does it relate to malls? I only bring it up as a counterpoint—that the retailers who see themselves as being forced to open on Sunday and to force their employees to work on Sunday, look at the government, which is a very large retailer, and say is it not strange that this large operation, the LCBO—

The Vice-Chairman: Mr. Farnan, I am going to have to restrict you to the subject of your motion. I think you are off point and out of order. I would ask you please to get back on point.

Mr. Farnan: Okay. We were in Peterborough and the Greater Peterborough Chamber of Commerce put a thumbs down to the government's proposal of putting the regulation of Sunday shopping in the hands of the municipalities. Basically, their major point was that there would be a loss of market share. Sunday openings—

The Vice-Chairman: Is this related to shopping malls, Mr. Farnan?

Mr. Farnan: Absolutely.

The Vice-Chairman: Could you demonstrate that, please?

Mr. Farnan: On the basis that if the shopping malls are going to have a larger share of the market, it has to come from somewhere else, and the place it comes from are the smaller stores and the downtowns.

The Vice-Chairman: Does the brief you are referring to relate to shopping malls specifically?

Mr. Farnan: Mr. Chairman, I think at that stage you have to accept the fact that if the greater Peterborough Chamber of Commerce and its distinguished president, Bill Paris, are saying that the market share of their community is going to be moved to the shopping malls, I would take the word of Mr. Paris, as reported in the Peterborough Examiner of August 26, 1988. Surely, that very clearly refers to shopping malls. Would that justify it, Mr. Chairman?

The Vice-Chairman: I just wanted to know where your comments were leading us, Mr. Farnan.

Mr. Farnan: Thank you, Mr. Chairman. An equally important body, the Ottawa-Carleton Board of Trade, on the effect of overhead cost and profitability for retailers—and again it is talking in terms of the consequences to it of competing with the malls in terms of staying open—states: "Our conclusions are that our small to medium-sized retail members are most at risk from the adverse effect of this legislation, as they will have great difficulty in absorbing the possible additional cost from extra taxes, labour and lease costs without transferring these to their customers."

Again, it is another very distinguished body. The Ottawa-Carleton Board of Trade, the Peterborough Chamber of Commerce, the Anglican Church, the retail workers, civic authorities are all saying the same thing, that there is a transfer of the share. We are not talking about an added amount of money. We are talking about the distribution of that money.

The Sunday option will hurt stores, the committee is told. I will not go into that in any great detail because, although it was another spokesman from the board of trade, it is a very similar type of comment and I will pass on.

Canadian Retail Hardware Association, at Queen's Park on August 8, "Due to the highly competitive nature of retailing, the vast majority of our members will be forced to open on Sunday if the competition opens on Sunday," namely the malls. As you well know, the Canadian Retail Hardware Association is very concerned about that. "Our members would be forced to open for economic survival, not because of any desire to open on Sundays."

Mr. Chairman, you asked me specifically did I not support the creating of extra jobs by the malls or by the majors. I feel that in order to answer this, I must draw your attention to my basic line of reasoning. If I thought that it was just a question of good jobs, real jobs, well-paying jobs, and full-time jobs becoming available, it might moderate my view somewhat, although I think there are other values that I should have to put into the balance.

Here is an article: "What Simpsons was not saying when it gave up the Sunday fight." You remember Simpsons did not open on Sunday but they attempted to do so. "There is a very important reason for the turnaround that went unreported. Simpsons was having a hell of a time recruiting enough staff to open the stores. The company failed to ask its employees in advance if they would work on December Sundays. 'In our store, Simpsons needed 100 people to open,' said Jerry Montcalm, president of Local 1000 of the Retail, Wholesale and Department Store Union."

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"Out of a staff of 480, they could hardly get 20 people to volunteer the first time around. Simpsons shifted gears and started calling employees into the supervisor's office in groups of three and four. According to Montcalm, their line was, 'I like my job, do you like yours?' Without the staff to open Sundays, Simpsons argued, the stores would be forced out of business by the competition. After two days of hard work Simpsons had managed to scare up 55 volunteers for the next Sunday at Sherway Gardens, still not enough to open. Part of Simpsons' problem was its defiance of a clause in the contract which provides double time pay for Sunday work."

"'They came to me and I said I couldn't work. I would be breaking the contract' said Jerry Montcalm 'and I said, 'If anybody does work, we will

filing grievances to get them double-time pay.'" With a shortage of Sunday staff, the threats of grievance action and the hostility of workers whose employer was asking them to break the law, Simpsons had to back down.

"On Thursday, the Supreme Court announced it would rule on the Sunday law before Christmas. Simpsons' PR staff quickly made plans for the next day's press conference."

That is part of the reason why these jobs become somewhat questionable. I can remember, to add to the point, and you will remember, a young lady whose voice was cracked and she was almost in tears as she sat in front of this committee. She was scared. She wanted to remain anonymous but because she was appearing before a public committee she was told by the chairman, the chairman who is currently presiding, that, "It was just the rules of procedure that you had to make your name available."

Mr. Chairman: No, no, no, I did not, at all.

Mr. Farnan: Maybe you can correct me, Mr. Chairman, but I believe that under regulations—

Mr. Ballinger: If we were to correct everything you said, we would be here all day.

Mr. Chairman: I gather that what you have been doing up to this point and while I was out was dealing with section 2a. I hope it was.

Mr. Farnan: Yes, Mr. Chairman.

Mr. Chairman: Okay. Go ahead.

Mr. Farnan: I would just like clarification on the point.

Mr. Kanter: On a point of order, Mr. Chairman: I have been listening as carefully as I can to Mr. Farnan's lines of argument. I think he is out of order and should be brought to order because he is not debating the amendment at hand. He has referred to department stores and majors, the Liquor Control Board of Ontario and various types of stores, hardware stores, the labour market at Simpsons and he is now referring to a witness who appeared before the committee, none of which relates to the closure of stores in malls, which is to say, two or more stores that maintain a common parking lot.

I think he is also skirting and, I think, falling over the line of needless repetition, reading at length from certain documents. I really think the whole line of argument is simply not directed to matters other than the question under discussion and I would ask you to rule on this point of order.

Mr. Chairman: I agree with you. Mr. Farnan, you will not read extensively from documents again. That is contrary to the standing orders.

I disagree with you, Mr. Kanter, that he is not, in fact, addressing subsection 2a or 2b because what he is saying is that shopping malls may not open on Sunday and he is giving the reasons for it. He is perfectly entitled to do that. Under the standing rules, he can speak for as long as he wants, as long as he does not continue to reiterate the same point.

Mr. Ballinger: Is that per day, per week or per month?

Mr. Chairman: He has not to this point so I find part your point of order to be in place, that you do not read from documents any further, Mr. Farnan, but you can continue with the debate on the two amendments.

Mr. Farnan: Mr. Chairman—

Mr. Chairman: That is my ruling.

Mr. Farnan: Naturally, I will follow every ruling of the chair. The only thing is, I know that you would not want me simply to do that blindly, you would want me to do it out of a conviction that the chair was indeed correct. I have to ask you, if I have what I believe is a relevant quotation from an authoritative source— For example, I have quoted the Ottawa Board of Trade, the Peterborough Chamber of Commerce, very briefly, I might add. The quotation in each case was perhaps three or four lines.

Mr. Ballinger: We were all there in living colour.

Mr. Chairman: Let me refer you to standing order 19(d)4, "In the opinion of the Speaker"—in this case the chairman—"refers at length to debates of the current session or reads unnecessarily from verbatim reports of the legislative debates or any other document." So my ruling is that you are not to read from these documents. We have heard them all, as Mr. Ballinger quite properly pointed out, during the public hearings. We are all familiar with them. Therefore, you are out of order if you refer to those.

I might go on as well to emphasize the rule that I indicated, 19(d)3, which is part of the point I tried to make before, "Persists in needless repetition..." So if you go to either one of those extremes, I will rule you out of order.

At the moment, I disagree with Mr. Kanter. The items you are debating at the moment are relevant and referable to your amendment, so go ahead.

Mr. Chiarelli: On another point of order, if I may, is it in order at all for the chair to try to seek an indication from the speaker as to the expected length of time that speaker will be consuming in order to complete, in order that some of the other members might be able to properly arrange their sleep time?

Mr. Chairman: No. The rules provide that in committee there is no limit to the debate as long as it does not breach any of the other standing orders, most specifically standing order 19. So he has the floor. Go ahead, Mr. Farnan.

Mr. Farnan: Thank you, Mr. Chairman. I will not quote from this document, as you suggest, I will merely name the document.

I would appreciate it if Mr. Ballinger would take his seat. I do not appreciate his sitting beside me at the committee.

Mr. Ballinger: Excuse me. I just got a mess of papers.

Mr. Chairman: I should refer you to the order I referred to. It is section 101 of the standing orders, which says, "In any standing or select committee, the standing orders of the House shall be observed so far as may be applicable"—that is standing order 19 and others—"except the standing orders limiting the number of times of speaking."

Mr. Farnan: Basically, I am just going to mention that this is the statutes of Nova Scotia.

Mr. Chairman: How do the statutes of Nova Scotia have anything to do with subsection 4(2a) or subsection 4(2b) in the foggiest way?

Mr. Farnan: Let me tell you, Mr. Chairman.

Mr. Chairman: No, I want you to indicate how that is relevant to subsection 4(2a) and subsection 4(2b).

Mr. Farnan: As they made their decision to go back to provincial control as opposed to the local option, the debates in the House of Nova Scotia made reference to fairness for retailers vis-à-vis shopping malls and majors.

Mr. Chairman: I am not going to let you refer to those because I do not think they have any bearing whatsoever on subsection 4(2a) and subsection 4(2b). If you have other things, go ahead. That is my ruling, Mr. Farnan. You have your remedy. You can challenge the chair if you choose to do so.

Mr. Farnan: I am very reluctant. Bob has not got enough hands to challenge the chair.

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Mr. Chairman: Then go ahead with what is relevant to subsection 4(2a) and subsection 4(2b). You have the floor.

Mr. Farnan: I think we are talking in terms of what is consistent and fair. I think one of the purposes of this bill, one of the words that is a catchword—in fairness, I should not say it is a catchword of the government because I think with good intent, the government does want to be fair. However, the course that it is taking in promoting this bill is actually a course that will result in an act that will actually create great discrepancies across the province.

I admit that the rationale, as presented by the government, is that what is good for one part of Ontario may not be good for another part of Ontario, and what is good for one community may not be good for another. But, you know, the people of Ontario want fairness and they want guidelines that will create fairness.

Mr. Chairman: I am going to rule, again, that you are not addressing subsection 4(2a) and subsection 4(2b).

Mr. Farnan: I am going to suggest to you that subsection 4(2a) is an amendment that, indeed, addresses the concept of fair and equal enforcement across the province.

Mr. Chairman: Go ahead. If you can tie it in, fine, but if you—

Mr. Farnan: Would you agree, Mr. Chairman, that if we have an amendment here before us that is province-wide, that the citizens of Ontario could look at this and perceive it as being fair. Now, it may not be everybody's cup of tea. It may be that the government may ultimately reject this excellent idea. But on the other hand, it is possible that the people of Ontario, as they look at it, could say that the member for Cambridge is right,

that we need something that can be applied more equitably across the province. Indeed, that is the very purpose of this bill, to bring some sense of equity to the legislation.

The legislation, I think, could have balance. I think that is the key. This motion is an opportunity that I hope the government will grasp. It is maybe one of the last chances it has to legitimize the legislation that is coming down the tube. I may actually, in the process of making this motion, be saving the government from itself, and in fact be making the legislation acceptable and palatable to the people of Ontario.

I am not going to read from this document, but I refer again to the Coalition Against Open Sunday Shopping in their basic critique. I want to draw to the attention of the members, and I would ask the members to read for themselves, the section of the document that is contained on page 13 which addresses tenant protection and that whole area of leasing which we are all familiar with.

So I want to come back to my final point. I have a lot of other quotes here, as you can see. I suppose I could read out the source of these quotes because I do not intend to read them myself. But I do want to just simply bring them to the attention of the committee. Therefore, very briefly, I am just going to run through and say the association of Canadian Tire stores in Ottawa in its brief on August 19 on page 1, third paragraph; last sentence, it talks in terms of values that may be more important than monetary values. I talk here in terms of the values that drive and motivate a business.

It is no crime. I would be the last, indeed, to question the right of the Bay, Simpsons, Zellers or any of the majors to make a profit. I think we all want these companies and corporations to be profitable. What the people of Ontario, the small retailers, the workers of Ontario and the church groups are saying is there are other values besides the values that primarily motivate the Bay, Zellers, etc.

I say "primarily motivate" because I think indeed these corporations do share other values, but the primary value is the profit motive, the bottom line, whereas the primary value for a community or workers or a church group or the children who appeared before us and presented us with all those paintings—when you compare their primary value before this committee with the primary value of the majors, it is radically different. The primary value of the majors is profit. The primary value of those children was "time with my parents." The primary value of the parents was "time with my children." The primary value of communities is days when the community can celebrate together. You have to look at these values, not in isolation, but as they counterbalance each other.

I believe the primary value of the majors is a value system that we can accept up to a point. We believe a company has the right to make a profit, but we also believe that a company has a responsibility to be a good employer. We also believe that perhaps having a common pause day is a value that a worker would want that is in direct contradiction of an employer who puts profit first at all costs.

Mr. Chairman: I am going to bring you back again to the amendments. They deal with the mall. Let's get back to the mall.

Mr. Farnan: Thank you. I was just referring briefly to each article.

The next article I would like the committee to look at is the Ottawa Stake of the Church of Jesus Christ of Latter-Day Saints on page 8. It is the top paragraph, and it talks precisely about those values in counterbalance to the values of profit.

Mr. Chairman: In a shopping mall?

Mr. Farnan: Where else? "Sunday store openings, the London Conference of the United Church of Canada."

Mr. Chairman: It is not here.

Mr. Farnan: On page 2 of the document, it talks about the impact on teenagers. Again, I want to talk about the juxtaposition of competing values.

The shopping malls—

Mr. Chairman: I thought you had licked that, Mr. Farnan.

Mr. Farnan: Although it may be inadvertent, I do not think the shopping malls are setting out to have Sunday shopping simply to put additional pressure on students, but we have heard in the brief from the Church of the Latter-Day Saints that this is indeed a spinoff. The Church of Jesus Christ of Latter-Day Saints made some of the finest presentations to this committee. Indeed, the points they made concerning education were reinforced by Mr. Radwanski—I think that was his name—who very much emphasized that additional work for students, particularly additional Sunday work would indeed be an additional pressure.

Mr. Ballinger: You are supporting the Radwanski report now, right? That is not what you said in the House before.

Mr. Farnan: Again, it is a value system that is in direct contradiction—

Mr. Chairman: We cannot pick up your points of eloquence, Mr. Ballinger, unless you stop eating and sit down, unless, of course, you have brought something for the rest of us.

Go ahead, Mr. Farnan.

Mr. Farnan: The brief from the United Steelworkers of America, Local 8995, on page 2, the last sentence of the first paragraph, points out clearly that many people who seek employment with large department stores that may be located in malls will not have the option, that the question to those individuals will be, "Are you prepared to work on Sunday?" and to answer no to that question will mean no work at all. It is always nice to see the United Steelworkers of America at the forefront and presenting briefs on important issues before the Legislature.

Mr. Ballinger: Only an NDPer would say that.

Mr. Farnan: No. I hold in my very high esteem all the people from the business community, the labour movement, the church groups and civic authorities who made the effort to be present and to participate in these very important hearings.

I think the next brief submitted by the council of the city of St.

Thomas goes to the heart of the issue, an issue that my colleague the member for Durham East (Mr. Cureatz) so nobly enunciated through the course of the hearings. Again, it is a competing value, with the values espoused by those who would simply want to have profit on Sunday as priority values over other values. The council of the city of St. Thomas clearly established that in its view, family values were the most important.

I leave out the next brief because it reiterates exactly the same point as the St. Thomas brief.

The Pentecostal Assemblies of Canada: I just mention this particular group—

Mr. Chiarelli: On a point of order, Mr. Chairman: I really think this is needless repetition and it is contrary to the rules. All these briefs are on record with the committee.

Mr. Ballinger: We have read them all.

Mr. Chiarelli: We have read them all. They are all there. I really do think it is out of order. I would like a ruling on that, please.

Mr. Chairman: Let me think about that for a second.

Mr. Farnan: I am doing my best to conform to your—

Mr. Chairman: That is the first rule, that you not read from documents unnecessarily, but I think the interesting point has been raised of standing order 19(d)(3) as to whether it is repetitious. We have heard them. I think we will adjourn for five minutes while I decide that issue.

The committee recessed at 4:44 p.m.

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Mr. Chairman: Let's get back on the record.

Mr. Farnan: Mr. Chairman, I will not read; I will simply name—

Interjections.

Mr. Chairman: You do not need a ruling from me then. I could have told you the ruling would have been in your favour.

Mr. Farnan: Thank you very much. In that case, I have to—

Interjections.

Mr. Chairman: You said you are just going to name these groups.

Mr. Farnan: Yes, at this stage, I simply want to name these groups. The first one is from his worship, Mayor Joseph McCaffery and the corporation of the city of St. Catharines. It deals with the value of quality of life. The next brief is from the Waterloo Chamber of Commerce, again talking about competing values other than simply profit. The Retail, Wholesale and Department Store Union: It was a submission of August 8, again dealing with competing values and stressing the importance of family and children over profit.

Finally, there was that outstanding brief we received from REAL Women of Canada in Toronto. Again, this was a brief that talked very strongly about the quality of life. Basically, it stressed that governments should shore up family values, not undermine and denigrate them. These are the briefs I wanted to touch base with.

I will make my concluding remarks. I think all members of the committee will agree that we have built a very strong case for not allowing retail business establishments located in shopping malls to open on a Sunday. I think the members of the committee, despite the fact they did not hear all of the evidence to support the case, probably heard sufficient perhaps to ask themselves very serious questions about the possible damage to other values that reliance on profit would entail.

I think I have established that it is indeed the majors, the big players, almost like the barracudas of the retail world, those companies that will look at profit and perhaps not intentionally wish to undermine other values, but as a consequence of their decisions they do in fact undermine those values.

The second point I made, in summary, was the redistribution of market share. It is a generally perceived view from all sectors, including the majors themselves, that they will take up more of the profits. Naturally, when you are a small retailer and someone else is creaming off the top 15 per cent of your profits, that is your margin of profit. It is precisely that 10 or 15 per cent that makes the operations of many of the small retailers viable. It is precisely because that most important area of their business—their margin of profitability—is being creamed off that will result in many small businesses being adversely affected, perhaps with an erosion of downtown cores and an erosion of the entrepreneurial spirit that has made this province so great.

Mr. Chairman, I know the government has attempted to put some emphasis on small business by setting up a small business committee within your caucus. That is a noble and very worthwhile approach to take. That is my belief. It is one thing to say to all these merchants, "We have seven parliamentary assistants working on a small business committee, but we are going to succumb to the major players in the marketplace, the big boys, The Bay, Zellers, etc.," but it may be that this committee is going to be simply working with small businesses that are in crisis as a result of the type of legislation in Bill 113 and Bill 114, and in fact will undermine the very businesses that you want to make more vital and more prosperous.

The other point is the definition of "shopping centre." I come to subsection 2b of this amendment. It is not an amendment; it is a motion. Just for a couple of minutes, I want to talk to the idea of why it is worded as it is, and particularly to elicit the co-operative spirit of my colleagues in perhaps redefining it. Of course, I am not sure yet that this definition may not fly, but I have gathered from one or two of the comments that there is some reluctance to support the motion based on the definition of "shopping mall."

1700

Mr. Chiarelli: Are you prepared to support your own motion; namely, subsection 4(2b)?

Mr. Farnan: Basically, I am prepared to work with the committee to find a definition.

Mr. Chairman: You have a definition. I would like you to direct what I thought were your closing comments to the entire matter to "shopping mall." That is what we are debating, not working with the committee.

Mr. Farnan: I would like the committee to have a look at these other definitions, but I am not going to do it right now because I think you have already ruled that out of order.

Mr. Chairman: No doubt.

Mr. Farnan: Did you, Mr. Chairman?

Mr. Chairman: Probably. I think I did.

Mr. Farnan: If I introduce the definitions now, is it out of order?

Mr. Chairman: You already have in subsection 4(2b) a definition of "shopping mall." It means "a group of two or more stores that maintain a common parking lot for patrons of those stores." That is what we are addressing.

Mr. Farnan: Let me say it one more time for the record. The purpose of this particular definition is simply for discussion and to see how my colleagues would perhaps redefine "shopping mall."

Mr. Chairman: No. You have an amendment before us. You address the amendment. If somebody cares or you care to move an amendment to the amendment, that is one thing, but I am going to restrict you to the amendment as it is phrased. That already has a definition of "shopping mall."

Mr. Farnan: Do we vote on this first? I have to seek your advice, being a new member and not knowing the procedures. If I want to put an amendment to the motion that is before us—

Mr. Chairman: Then we would vote on the amendment first and then the amendment to the amendment. This is an amendment to section 4.

Clerk of the Committee: No, it is not. It is an independent motion. It is not an amendment to Mr. Kanter's motion.

Mr. Chairman: I am sorry. This is an independent motion, so it is therefore not an amendment to anything. But he has it reading, "be amended by adding thereto the following subsections."

Clerk of the Committee: But he is not amending ??someone else's motion.

Mr. Chairman: In any event, if he put an amendment, we would vote on that amendment first and then on subsections 4(2a) and 4(2b).

Mr. Chiarelli: On a point of order, Mr. Chairman: We have a motion here which includes subsections 4(2a) and 4(2b) and we have had one person, the mover of the motion, participating in the debate and discussion on that particular motion.

Now we are into moving amendments to the amendment. I just think, as a matter of course and practice, we should deal with them one at a time. If Mr. Farnan wants to move an amendment after everyone on the committee has had an

opportunity to debate the issue, then perhaps that would be the appropriate way to deal with it.

Mr. Chairman: I am not sure that is a point of order, but I think, as a matter of fairness, that is probably appropriate, that we deal with this amendment first and then, if you care to put an amendment afterwards, you can do so. Do I gather that you have finished addressing subsections 4(2a) and 4(2b) and we can deal with the matter of a vote?

Mr. Farnan: Sorry. I did not realize—

Mr. Chairman: Mr. Chiarelli has suggested that if you intend to move an amendment, that it not be fair that that be done until other members have had a chance to speak on subsections 4(2a) and 4(2b). I have Mr. Chiarelli on the list for that. So when you are finished, maybe you would let me know.

Mr. Farnan: We would wait for the amendment until after everybody has had a chance—

Mr. Chairman: You wait until all members, any other members who wanted to, speak on your present amendments and then we would vote on those. Then, if you chose to move a further amendment, we would deal with that later on.

Mr. Farnan: Right. I think that is fair. In conclusion, I would welcome any comments that Mr. Chiarelli would have that would help us maybe reach a consensus around the definition of a shopping mall, which indeed I find very perplexing. I do not believe it is an easy definition but Mr. Chiarelli might be able to add something to that.

Mr. Chiarelli: I will try to be very brief, Mr. Chairman, hopefully in less than three or four minutes. I thought it was very interesting that when the mover of the motion began his debate, he insisted on reading the motion again into the record. I think it is very appropriate that he did that as part of his committee filibuster and I will certainly read his amendment into the Hansard in the House when this debate gets to that point.

Mr. Chairman: Mr. Chiarelli, you are out of order. If you have something to say in reference to the amendments, please do so.

Mr. Chiarelli: I will. I am going to restrict my comments to 2a and 2b of the motion and I am going to indicate some conclusions that I have reached with respect to 2a and 2b and then give some basis for my conclusions. So, if you will bear with my conclusions, then I will give you the basis for them.

First of all, the opposition, particularly the NDP, in this particular motion as well as other motions, to my way of thinking, is using the committee process and this motion—

Mr. Chairman: You are out of order, Mr. Chiarelli. You are relating a motive to the member, which is contrary to the rules and I would ask you to address the motion.

Mr. Chiarelli: I will. Is it in order for me to indicate my conclusions and then indicate the basis with respect to this motion?

Mr. Chairman: You are ascribing a motive, which is contrary to the

rules, to a member of this committee. The facts may speak for themselves but you are not entitled to attribute a motive to another member. I so rule.

Mr. Chiarelli: All right. My conclusions with respect to this motion are that it is very inequitable, that it is very untechnical, that it is very loose-headed, that it attempts to create a bogymen; i.e., quoting the member, "powerful forces of these financial groups who have friends in government." I say that this particular motion creates great inequities, is extremely unfair and I would say that the mover of the motion probably has not even considered how it is going to very intimately affect businesses, small business people, retailers in his own riding.

There is no consideration, obviously, in this motion as to how many present stores legitimately open would have to close. Under this motion, a small bookstore or small convenience store in a strip mall would have to close. I think that should be pointed out when this debate gets to the House. I think this motion is full of loopholes. It opens itself to roping off parking lots, which is obviously possible under this motion. It is very possible for municipalities to provide parking in order to attract malls, or stores that are connected or have adjoining walls. Therefore, they would not be a shopping mall under this particular definition.

I can relate to many circumstances in my own riding, where in a shopping mall there is a drugstore which is open on Sunday, which is used by many, many people to the convenience and to the desire of many people in my riding. Under this motion, it would have to close. I can relate it to another strip mall where there is a small ice cream stand open, Baskin-Robbins, in a strip mall which is open on Sundays.

Mr. Kanter: Mike Farnan would close down the Baskin-Robbins ice cream stores. Mike Farnan is a grinch. He is a grinch.

1710

Mr. Chiarelli: That is exactly what he would do by this motion, and I think it is very, very important to realize that this type of motion is being presented to this committee and the public will know about it when the debate gets to the House.

The mover of this motion was happy to quote from a letter of October 3 from the Ontario Convenience Stores Association which was referring to certain amendments. I would dare say that if the Ontario Convenience Stores Association were to see this motion—

Mr. Farnan: On a point of order, Mr. Chairman, I do not believe that I quoted from such a letter.

Mr. Chairman: That is not a point of order. You can correct your own record, but that is not a point of order.

Mr. Farnan: Maybe then, with your permission, I will correct the record.

Mr. Chairman: No. You will not do it now. You will do it when you have your opportunity. That is not a point of order.

Mr. Chiarelli: Reference was made, in any case, by the mover of the motion to the Ontario Convenience Stores Association, referring to amendments

to Bill 113, and I would hazard a guess that the convenience store association would hang the member from the toes from the highest post if it saw this particular motion because, in effect, it would end up closing thousands and thousands of convenience-type stores across the province. That would be the result of this particular motion.

The motion is full of loopholes because, by the member's definition, it is intended to close down the malls and protect the downtown cores. What about the downtown cores that have major operations such as an Eaton's or a Bay that are not part of a plaza? There is absolutely no consideration to those circumstances in this particular motion. My only conclusion is—

[Interruption]

Mr. Chairman: Close the door, please.

Mr. Chiarelli: In conclusion, I am making my remarks because I think it is important that people realize how this committee is being used by having such untechnical, loose-headed motions placed before it. Finally, I will make sure that this motion is introduced in Hansard when the debate enters the House, as well as various other motions that are put forward by the New Democratic Party which is supposedly in favour of the little guy and equality.

[Applause]

Mr. Chairman: There will be no applause.

Mr. Runciman: Scary, very scary.

I just want to go on the record with expressions of sympathy for Mr. Farnan in respect to the intent of his motion. I have some difficulty with the definition that he has provided in the amendments, but I think he indicated on a number of occasions his willingness to be receptive to an amendment to his amendment. It may be more acceptable to members of the committee. I think that at some juncture I am going to move an amendment to his amendment when you deem it appropriate, Mr. Chairman.

I think his concern is a valid one. Although I have not been sitting on this committee throughout the summer hearing process, I know from my own community that certainly the main pressure for open Sunday shopping does seem to originate with the major retailers located in malls and the owners of malls. I suspect the owners of malls in many instances operate on a basis whereby they are receiving a guaranteed rental per month or per annum, but there is also a clause in the rental agreements whereby they, I think, have an option of receiving a percentage of net in many of these businesses if it exceeds the rental rate that is set down on the rental agreement.

So obviously there is an incentive for the owners of the malls to see these facilities generating additional business. Obviously they, along with the major tenants, feel that by opening that additional day of the week, they are indeed going to have that effect. I guess I sympathize with Mr. Farnan's view that that is indeed going to impact negatively primarily on the smaller operations and the cores of many business centres across this province.

I know the people who have come to my office and expressed concern about being required to work on Sundays are employees of operations that are housed in malls. They are the people who are coming to my office and expressing concerns. It is not the employees of the small operations in the downtown

cores of the various municipalities. It is the people who are required to work in the Zellers and the Sears, and Hudson's Bay stores, etc., located in malls.

So I think his concern is a valid one. Indeed, the government and the parliamentary assistant have been maintaining throughout this process that they really want to see Sundays continue as a day of rest and they want most businesses in this province not open for business as usual. I think they should recognize the legitimate concerns that Mr. Farnan has raised by his amendments.

It is a positive step, in a sense, addressing that valid concern. I have had the opportunity to review briefly some of the definitions provided by Susan Swift with respect to the definition of a shopping mall and, Mr. Chairman, whenever you deem it appropriate, and perhaps this is the occasion, prior to taking a vote or calling a vote, again I am not sure about the procedural appropriateness of this, but I would like to move an amendment to the amendment.

Mr. Chairman: All right. Fine.

Mr. Runciman: I will move that the definition in 2(b) read: "Shopping mall indoor centre means a group of retail stores and other business and service establishments in an integrated building arrangement operated under common ownership or diverse ownership under unified control involving common parking areas and mutual easements." I can provide that for the ease of the clerk.

Mr. Chairman: All right. We have an amendment before the committee by Mr. Runciman. Would you like to continue and speak to that?

Mr. Runciman: Very briefly, since I do not now have it in front of me, but I think it will address some concerns that Mr. Chiarelli mentioned in his comments.

Interjection: It must be a slow week to make up your mind who you want to sit near.

Mr. Ballinger: Now, Farnan, if you do not ask that gentleman to leave, I am going to be disappointed. You would not let me sit beside you.

Mr. Farnan: It is a matter of respect.

Mr. Chairman: Go ahead, Mr. Runciman.

Mr. Runciman: I think Mr. Farnan has been under a good deal of pressure in carrying the load for his party for the last period of time and he admitted as much when he tabled this amendment, in that he was very receptive to the idea of perhaps a wider ranging and broader definition of shopping centre or mall. I think Susan Swift has provided us with that answer and it could indeed prove to be acceptable to the government members as well as to the two opposition parties.

I think it is a definition that all of us can live with. I think Mr. Farnan would be the first to admit that his definition of a mall as "a group of two or more stores" was terribly restrictive and one that virtually all of us would have difficulty in accepting. It would rule out an awful lot of mom-and-pop operations and smaller operations which I do not think we really

want to impact on in terms of this particular section of the bill. I would certainly like to hear Mr. Farnan's comments with respect to my amendment and those of other members as well as to how they feel this may address their concerns.

1720

Mr. Chairman: Thank you, Mr. Runciman. Mr. Farnan, on the amendment—

Mr. Farnan: Yes, Mr. Chairman, may I see that amendment, please?

Mr. Chairman: Copies are being made.

Mr. Farnan: I want to make—

Mr. Runciman: Sorry, Mr. Farnan. Mr. Chairman, it was pointed out yesterday, and Mr. Kanter made reference to it as well, that Mr. Spring is going on vacation effective tomorrow and that he would like to deal with the questions Mrs. Cunningham raised. Hopefully, before the afternoon adjournment we can have Mr. Spring come forward.

Mr. Chairman: How about we do it now? Unanimous consent that Mr. Spring—I understand he is not feeling too well either, so maybe we can accommodate him right now to give Mrs. Cunningham a further explanation as to subsection 2a. Mr. Spring, would you like to come forward? You gave Mrs. Cunningham some explanation yesterday or last week or something and she wanted more information. Are you going to provide her with that now?

Mrs. Cunningham: October 31, it is dated, and it was therefore yesterday. I thank Mr. Spring for his response. I have a couple of questions, though. I am trying to get my thoughts together on this, Mr. Chairman. Just bear with me.

If I can remember correctly, I had some concern about the large tourist areas that now enjoy an exemption. It was my understanding they were exempted by virtue of the old section 4, meaning a tourist area, and therefore I would ask a question of Mr. Spring, looking at the Hansards. It has to do with the last part of his statement. I am looking at J-1610-1 at the bottom of the page. "Having said that, I will concede that there may be circumstances in which it could be shown that some part or parts of a particular complex clearly lie outside the exemption granted by the tourism licence and outside any other exemptions permitted under the legislation."

Reading this response, in responding to my question, were you responding to the operation that would be exempt because of a tourism licence under the Tourism Act?

Mr. Spring: Yes, basically, I was. I had understood the question to address the type of operation in which some, if not all of the establishment was exempt under the Tourism Act, and yet there might be parts of it which did not fall within that type of establishment contemplated as being licensed under the Tourism Act and would therefore require an exemption of another kind.

If there was not an exemption of another kind available under the act, then it would be necessary for the operator to apply for what exemption is available. If it is in territory without municipal organization, it might be a regulation. If it is within municipal territory, you may have to approach

municipal council for what is now a tourism bylaw, or if Bill 113 were to pass, a bylaw under section 4.

Mrs. Cunningham: I guess my question related specifically to the tourism bylaws. That was my question, because I was trying to find out—for those operations that are exempt under tourism bylaws or the definition of "tourism," however one wants to put it, my understanding now is that they would have to go forth and get an exemption in another way. Otherwise, they would have to go to the municipality with the new act. When you drew the argument with regard to tourism licence and related it back to the Tourism Act, I was confused, because I do not think those operations would be affected anyway, would they, by this new legislation?

Mr. Spring: They could conceivably be. Under section 4, in the absence of anything removing it from the option of the municipal ambit, I believe a municipality could in fact be closed down, if you will, by a municipal bylaw.

Mrs. Cunningham: Yes, okay. I just could not get the relationship you were drawing with the Tourism Act, so I am fine on that.

Mr. Spring: I am sorry if I have misled you.

Mrs. Cunningham: Well, that would not be hard to do, that not being your problem but being more mine.

Mr. Spring: I perhaps misunderstood your question.

Mrs. Cunningham: Getting back to this question, if a group were allowed to, if part of a group's operation were to close down—to be specific, I am now talking about the part that would be selling clothing more than anything, I suppose, as the best example in these large operations. I am told there are some 200 of these large operations across the province. My fear with the amendment that was put forth, in fact two amendments that were put forth by the government, is that in trying to appease this particular group and relieve it of its anxiety around whether or not it is going to be able to operate, we may in fact be creating even more problems.

The small mall developer down the road on some northern Ontario highway—let's face it, even in southwestern Ontario there are some examples—will probably challenge this operation that has the dress shop open. That was my concern and I wondered if you shared my concerns in relationship to the two amendments that were put forth to appease these particular groups.

Mr. Spring: I can only speak from the legal point of view, and I would say this: To the extent that some part of a large composite tourism operation can be seen as not being licensed under the Tourism Act, and to the extent that it does not have an exemption provided under the current legislation, be it either in the legislation itself or by a tourism bylaw, then in order for that part of the operation to open legally, if you will, on Sundays and holidays, it would require some form of intervention, either by the provincial government or by the municipal government, to permit it to open, either by regulation or by municipal bylaw.

Mrs. Cunningham: That was my concern; even in the most liberal interpretation of those two amendments, that was my concern. In fact, you have confirmed my concern. If any of these operations were to call me and say, "By virtue of the amendments, are we going to be able to remain open?" I would

probably have to respond, "I believe that most of your operation will be able to remain open, and in fact for part of it you will have to go to your municipality or to the province"—if that is the case—"and get permission for the other part."

Mr. Spring: One has to look carefully at the provisions of the Tourism Act in order to determine what would and what would not be covered. My view is that the Tourism Act would cover quite a wide range or variety of activities associated with tourism. I cannot speculate on how wide that would be. As I said in my statement yesterday, I am willing to concede there may be some forms of retail operation within a tourist complex that may not be covered by that licence and accordingly would require some other form of exemption.

1730

Mrs. Cunningham: I was thinking that is why the government was putting forth the amendments, though, to cover that part, to cover hopefully the whole operation but specifically to make it inclusive. Surely you do not want to introduce amendments that would piecemeal an operation by virtue of Bill 113. Why not just lay it all back on to the Tourism Act and if they fall under it, they do, and if they do not, there is no purpose to the amendments, really?

Mr. Kanter: Since Mrs. Cunningham is looking at me intently, I presume she is looking at me for a response. That is fine. I have no difficulty in that.

Our intent is to treat like operations in a similar manner and to certainly allay the fear of tourism operators that any part of their operation that relates to tourism should be exempt. Anything that is licensed under the Tourism Act—that would include not only motels and restaurants, but some of the kinds of operations Mr. Spring was talking about yesterday. I think he gave the example of a store selling sporting goods or boots for hunting and fishing, or fishing tackle, or things that would clearly relate to tourism. That would clearly be exempt from any possibility of municipal shutdown under this amendment.

When you get to a retail operation unrelated to tourism, if you get to a tourist operation that also includes a shoe store, which I think was the example Mr. Spring gave yesterday, it could certainly apply for an exemption through its local municipality or direct to the provincial government.

Mr. Chairman: Unless they were alligator shoes.

Mr. Kanter: I think the chairman is causing difficulties here. Let me continue.

It would be in the normal course if it is a shoe store, or they could apply to the province if they are in an unorganized territory, for an exemption. I think with the point that was alluded to, if a mall owner or a small store owner selling shoes in an adjacent municipality had some concerns about unfair competition, that would seem to be a valid concern.

It is something that I know the member with her great concern for wide-open Sunday shopping, the quality of life of the people who might be working at these establishments—as Mr. Spring has said, that is something that might occur. I do not necessarily foresee it happening in a widespread

way. We are trying to treat stores selling similar types of goods equally. If there is a shoe store—we are trying to treat all shoe stores alike is what I am trying to say, regardless of where they are located.

Mrs. Cunningham: On this point, I thank Mr. Spring for the work he has done. I am sorry he is not feeling well and wish him a great holiday.

Mr. Ballinger: Aren't you complimentary today.

Mrs. Cunningham: Yes, I am, to Mr. Spring, Mr. Ballinger.

Mr. Ballinger: Does November 3 have anything to do with that at all?

Mrs. Cunningham: I did not even know the date.

Mr. Ballinger: I cannot wait to see the starch come out of your collar.

Mrs. Cunningham: Back to the issue of this committee: Mr. Kanter talked about my concern for Sunday shopping, and that is true, but I think at this point in the deliberations what we are all looking for is legislation that is very clear and that is equitable and fair. That is why we all came here to start with, at least as far as the minister was concerned.

More important is that it is enforceable. I hope I will have the opportunity to raise some examples if I do a little bit of homework on this, and make sure those two amendments will suit our purpose. I will definitely do my homework. I do not know what the answer will be, but I do not think we want to—I am going to have to look at the Tourism Act is my point, and the exemption that exists now.

I guess I will have to find two or three of these large conglomerates that are so concerned and see if what we are trying to do works. It is not a political position; it is one of recognizing the realities of this committee and coming up with something that is not going to cost the taxpayers of the province a whole lot more money just to try to enforce and to get either technical or legal opinions on. That is all.

In response to the opinion we have here—the part of what I read out in Hansard with regard to circumstances that could show that some part or parts of a particular complex clearly lie outside the exemption granted by a tourism licence—concerns me just a little bit. I would like to have the opportunity to look at what that really means, but I certainly cannot do it right here and now.

Mr. Chairman: I gather we had held down that section, pending your receiving the information. Do you still want it to be held down?

Mrs. Cunningham: If that is possible.

Mr. Chairman: Is there any difficulty with that?

Mr. Kanter: It seems there are several other aspects of this bill before us, so I suppose there will no difficulty.

Mr. Chairman: Is there consent, then, that we hold it down to give Mrs. Cunningham an opportunity to review it?

Mr. Farnan: I would agree to that. I would just beg the indulgence of Mrs. Cunningham to allow me three minutes to respond to—

Mr. Chairman: I would not want to deprive you of that, but we have held it down. Rather than muddy the waters at the moment, if we could agree that it go back to where it was before, which was being held down, and that we get on with—

Mr. Farnan: When was that?

Mr. Chairman: It was held down back some time ago, actually.

Mr. Farnan: That is fine.

Mr. Chairman: We will deal with it at that time. It was stood down only on October 31.

Mrs. Cunningham: No. It was the very first day of the hearing when the House resumed.

Mr. Chairman: If we can get back to Mr. Runciman's amendment to your motion, are there any members who wish to speak to Mr. Runciman's amendment?

Mr. Farnan: I do.

Mr. Chairman: Let me remind you that Mr. Runciman had inquired about the use of room 151. I am advised by the clerk—she is looking at me quizzically—that the way that would be dealt with would be by my writing to the chairman of the standing committee on social development; that is, assuming the committee wants me to do this. That would be the first issue. Is that right?

Mr. Ballinger: What would be the purpose?

Mr. Chairman: Let me just finish. The first issue would be whether or not this committee wanted us to do that. We will have to vote on that, unless we can have unanimous consent.

The second issue would be that because presently the social development committee is occupying that room, the normal procedure would be for me to write to the chairman of that committee. Assuming this is passed, I would prefer to have the House leaders make that decision. The chairman of that committee and I are of the same party. I think that to maintain the appearance of fairness, I would prefer to have it made by the House leaders, not between the two of us.

Perhaps the first thing we could do is just clear the decks—if we could, Mr. Farnan, before we get back to your debate and have the hour go by—and move that motion and deal with it.

Clerk of the Committee: We agreed previously to deal with it at the next meeting.

Mr. Chairman: Did we agree to deal with it at the next meeting?

Mr. Kanter: I would be agreeable to dealing with it now.

Mr. Chairman: Okay. Is Mr. Runciman available or do you want to move it?

Mrs. Cunningham: I will move it. He has a note to me here. He is not feeling well, either.

Mr. Chairman: Mrs. Cunningham moves, on behalf of Mr. Runciman, that we grant permission to request that the remainder of the committee hearings be held in the Amethyst Room.

Mrs. Cunningham: It seems to me that was to be introduced upon the completion today of Mr. Farnan's motion, but I think this is an important time. I did not realize that it would be necessary to have a motion of the committee. I just thought—

Mr. Chairman: I gather, before I ask, that there is not unanimous consent to do that.

Mr. Ballinger: No, there is not.

Mrs. Cunningham: I would just like to say a couple of things, then, in favour of this particular motion. When I asked our House leader (Mr. D. S. Cooke) what would be happening, he just said: "If no one has asked for the room, of course, one does not get the room."

The other point he made was that he did not really think there would be a problem if the House leaders were, in fact, to agree because this is a bill that we are debating here, as opposed to some two or three committees meeting right now looking at estimates. It seems to me that, in the interest of the public, looking at a piece of legislation that could go to the House at any time, this ought to take priority over any of the committee deliberations.

1740

Mr. Chairman: Could you give us some insight into that?

Mrs. Cunningham: I will tell you where I am coming from. I am getting some requests for information as to where we are in our deliberations and I think it is in the best interests of the public to let them know where we are. We had a little bit of trouble at the end of the summer around the Hansards and I appreciated that so I was not quite able to always recount immediately. I see we are more up to date now as to what truly was happening.

I think we are coming up with a couple of items of debate that are of interest to the public. One would be the drugstore issue, and I think the other one would probably be the fine, and some of the thinking and arguments that both the opposition members and the government would like to introduce as far as possible publicly. I really do not understand why the committees together would not be asking to reach the public as far as possible in the Amethyst Room just because I think this particular bill is more important than looking at the estimates. You talk about having to watch television and grandstand. You take a look at that. Those are the only points I would like to make.

Mr. Ballinger: I certainly was opposed to going into the Amethyst Room, and I still am, and I want to speak to that. In my honest opinion—and this is my first experience at Queen's Park in a public hearing process involved with a major piece of legislation—we have been, as a government

side, very open. We have travelled Ontario. Everything we did was either within TV range or radio range. I believe this has given the opposition members ample time and opportunity to put forth their arguments and to make their case.

Mrs. Cunningham: And the government.

Mr. Ballinger: And the government, agreed. But let us be realistic about the forum, Mrs. Cunningham.

Mrs. Cunningham: There are some perks to being in opposition, Mr. Ballinger, and there is a lot more sharing to do when you have seven as opposed to two members.

Mr. Ballinger: I understand all that, and I think we have sensitively tried to be fair at every opportunity where we could. I have sat here now for the last— Is this our third week, on Monday and Tuesday—

Mr. Chairman: I lost track.

Mr. Ballinger: I sat through the most bizarre afternoon when the Solicitor General (Mrs. Smith) came in that I ever have been exposed to in my entire life at any level of government. Both opposition teams will have ample opportunity in the House to make the same arguments that they make in committee on live television. I suspect that by us moving into the Amethyst Room we are going to go through this same procedure again in the House, and I, as a member of the government side, would not support that.

The opportunity will certainly be there for both opposition members to make their case within the House, and I would like to see us get on with this. Quite honestly, Mike, with the greatest respect, I have not any idea what your game plan is. I have sat here listening as intently as I could, difficult as it was to understand some of your amendments. You know, it begs the question: are the amendments sincere or is it a ploy to manipulate the process? Now only you can answer that question, but I can suspect and I just do not think that this committee should have to endure that part through the Amethyst Room when, in fact, you will have every opportunity to again make your case in the Legislature as long as the process takes. So for those few reasons, I will not be supporting us moving out of room 228.

Mr. Farnan: Very briefly, the member from London North (Mrs. Cunningham) makes a good point. It is a very important piece of legislation. It is a piece of legislation that we want the public to be as knowledgeable about as possible. It is in the best interests of any individual or group that they have as much knowledge as possible on the issue that is being debated. This has been very clearly an issue on which the people of Ontario have expressed considerable concern.

I can only look upon the action of the committee—if I am prejudging it correctly; I hope I am—if they do not support making these hearings available through the medium of television, one would have to suspect, as Mr. Ballinger made through his own conclusions, that in a sense it is a form of closure. It is a form of keeping the pertinent debates that surround this important issue away from the public for as long as possible. I am sure my colleagues in the Conservative party will join the New Democrats in condemning an attitude of government that says, "We will keep the people away from what is happening in the committee." I urge the members of the Liberal party to vote in favour of this particular motion. It is a motion that provides information to the

public. By defeating it you are saying to the people of Ontario, "We are not going to allow you to hear the deliberations that are going to so negatively affect your lives."

Mr. Chairman: Thank you Mr. Farnan. We are ready to vote then, I gather. I am sorry, Mrs. Cunningham.

Mrs. Cunningham: Before we vote I would like to hear from Mr. Kanter on this.

Mr. Chairman: I think a member only has to speak if they choose to do so.

Interjection: You didn't like my arguments then. I thought they were very fair.

Mrs. Cunningham: No, I did not like them. As far as being in the Amethyst Room and being available to the public, I am a member of the committee that is sitting in there right now and I will be on the estimates for the next some 20 or 40 hours just by virtue of my portfolio and the priorities of that particular committee. I have no problems with sitting in there and taking up all eight or 10 hours of the time if that is what it takes. It is not my style and I do not plan to do that. But with regard to what ought to be televised in the interests of the province of Ontario, I would say that this is the legislation that the citizens are most concerned about. As far as our working together as a committee goes, I think that ought to be exactly what we should be doing—getting the debate and the information out to the public.

As far as any of us and our options go, we are all accountable. If we choose to behave in a way that the public does not approve of or does not respect then I guess that is all part of—

Interjection.

Mrs. Cunningham: I do not know anything about that. I think that is all part of the accountability process. Some would gain and some would lose by being televised. That is not what I am talking about. I am talking about the debate around the specific clauses so that the public can be more informed as to what is happening. I will tell you what has been missing are the two parts of the bill that we have not talked about which I have already referred to and I will not repeat, because you do not like that when I do it, but we have not gotten into Bill 114 and I think that as we get into those particular clauses —

1750

Mr. Ballinger: Whose fault is that? Quite frankly, Dianne, and in all seriousness, whose fault is it that we are not even at that stage yet?

Mr. Chairman: Are you yielding the floor to Mr. Ballinger?

Mr. Chiarelli: It sure as hell is not our fault.

Mr. Chairman: Are you yielding the floor?

Mrs. Cunningham: I thought we were going to be concerned about our language Mr. Ballinger.

Mr. Chiarelli: We will get to 114 by 1990.

Mrs. Cunningham: No. I think we will be in there before Christmas. I think, perhaps, if people are worried about behaviour and what not, being accountable to the public and being televised may, in fact, assist this particular committee in the concerns of at least some of its members. But I would consider it to be somewhat irresponsible, Mr. Chairman, to say "no" in favour of estimates when we are looking at a bill which has so much public interest.

I just want to make certain that my concerns are public at this time because I am getting phone calls asking where we are as a committee. I will definitely let the public know how we—

Mr. Ballinger: As you always do.

Mrs. Cunningham: No, I don't always. This has been a very busy year for me, Mr. Ballinger, and I do not have time to let the public know about the kinds of things that I ought to be letting them know about. That is one of the reasons I think we ought to be in that particular room and take advantage of any opportunity we have as a committee to get our points out to the public, no matter what.

In fact, I thought, at least the part of the discussion we were having when I came in here today, was rather healthy because we were looking for a way to make the bill work. I asked for some time because I want to see—in fact, I will probably talk to Mr. Kanter about it because I am concerned that part of the amendment which the government put forth may be causing more difficulty than they are meant to cause and there may be a way of correcting it. I am not unaware of where we are going.

On the drugstore thing, I think we will have a lot of things to point out, and some positions that I took about three or four weeks ago have been somewhat changed. I would like to share those positions with the committee. Quite frankly, I do not know what to do about some of the discount drugstores. I think they have got some legitimate complaints.

Mr. Chiarelli: Local option.

Mrs. Cunningham: Yes. I suppose you are right.

Mr. Kanter: We are getting a little off track with respect to—

Mrs. Cunningham: Well, I am talking about the kinds of things that we should be talking about in public. Certainly, I would like to talk more about these amendments and get it very clear to the some 200 operations in the province as to what we are trying to do with the amendments to Bill 113 with regard to protecting them—that means stay open—with these tourist operations. I think there has been an effort made on behalf of the government there and I just hope it is something that will not cause more trouble. Those are the kinds of things I think we should be debating publicly. It is not a matter of asking questions for clarification. It is a matter of coming to some kind of conclusion at the end of every clause and voting on it.

I just want the members to know, including Mr. Ballinger, that if we are denying the public by not even requesting—just because we request it, it does not mean to say we get it—if we do not even request to go public on this, I think that would be worthy of some kind of an announcement to the public. I

would agree to that. I think that was a good suggestion on the part of whoever made it.

Mr. Ballinger: Mr. Chairman, I want to respond. This meeting today is held in public. If the press, for whatever reason, do not happen to think that this is a priority in Ontario—I mean it is open; they have every right to be here. They have not been here for the last three weeks—

Mrs. Cunningham: The argument is irrelevant.

Mr. Ballinger: No. The argument is very relevant.

Mrs. Cunningham: We are talking about public television that is going into the living rooms of the people of Ontario.

Mr. Chairman: One at a time.

Mr. Ballinger: And what you are saying is that this issue, to you, is more important than estimates, which is the spending of taxpayers' money. You are entitled to make that statement if you wish.

Mrs. Cunningham: I am saying that a bill that is to be enacted probably in December—

Mr. Ballinger: I happen to disagree with you.

Mr. Chairman: One at a time.

Mrs. Cunningham: —is much more important than estimates that we do year in and year out. You are quite right. If that is an argument, I will stand by it.

Mr. Ballinger: I just do not happen to agree with you at all.

Mrs. Cunningham: This is something which will affect the lives of people once it is passed, and they deserve to hear the debate if we can get it to them.

Mr. Ballinger: The estimates won't?

Mrs. Cunningham: I would think nothing will change—

Mr. Ballinger: With the greatest respect, I think you are way off the mark.

Mrs. Cunningham: I would think nothing will change with the estimates at all, but I do commend the government for agreeing to go through the estimates process for the first time in three years.

Mr. Chairman: I have fallen asleep at the switch. I am losing control of this meeting.

Mr. Ballinger: I want to tell you that you are the opposition. You cannot have it both ways.

Mr. Chairman: The Hansard staff are going to be spinning in their chairs because you are all talking at one time.

Ms. Collins: I thought Mr. Ballinger had the floor.

Mr. Ballinger: So did I, but that is quite okay.

Mr. Chairman: I feel that it is a case of tit for tat.

Mrs. Cunningham: —when one's name is mentioned.

Mr. Chiarelli: Can we have a vote on it?

Mrs. Cunningham: I think when one's name is mentioned, it is only fair to come back. But the issue here is that if there is a way of getting these deliberations to the public where we do not have to rely on what the priorities of the press are, we ought to take advantage of it and we are not taking advantage of it if we do not ask to be in the Amethyst Room. I think the public have a right, as far as possible, as they do when we are televised in the House, there was a reason for that. We have an opportunity here which I see the Liberal members of this committee not wanting to take advantage of and I would—

Mr. Ballinger: You are going to get that advantage in the House debate.

Mrs. Cunningham: I would underline that Mr. Ballinger has made his reasons clear and I am not sure if he is speaking for every member of this particular committee or not, but I have not heard a good reason at all coming from Mr. Ballinger.

Mr. Ballinger: That is because we are at opposite poles.

Mr. Chairman: I am going to give Mr. Farnan an opportunity. He has raised his hand again.

Mr. Farnan: What time is left? One minute?

Mr. Chairman: You will probably be adjourning the debate.

Mr. Farnan: In one minute, I want to...

Mr. Chairman: I should tell you that we should try to get this vote taken before the bell because the clerk has to do something and I have to do something.

Mr. Farnan: Very simply, in less than one minute, I want to say the request from the opposition parties, because this request is supported by the New Democrats, is for more openness, more public information. It is very simple. We want the public to see the kind of dialogue that is taking place between the government and the opposition parties.

The government members, by voting against the televised proceedings of this hearing, are actually voting closure on information passing to the public and in that sense, it is an act of arrogance on the part of the Liberal government.

Mr. Chairman: Thank you, Mr. Farnan. Are we ready to vote?

Those in favour of the motion of Mr. Runciman presented by Mrs. Cunningham?

Clerk of the Committee: Mr. Runciman has asked for a recorded vote.

Mr. Chairman: Okay. A recorded vote.

The committee divided on Mr. Runciman's motion which was negatived on the following vote:

Ayes

Cunningham, Farnan.

Nays

Ballinger, Collins, Hart, Kanter, Sola.

Ayes 2; nays 5.

Mr. Chairman: I am therefore relieved of the question of change of rooms.

The committee adjourned at 6 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

MONDAY, NOVEMBER 7, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Hart, Christine E. (York East L) for Mr. McGuinty

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Farnan

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Hopkins, Laura, Legislative Counsel

McNaught, Andrew, Research Officer, Legislative Research Service

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Ritchie, John M., Senior Crown Counsel, Criminal Law Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, November 7, 1988

The committee met at 3:37 p.m. in room 228.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Chairman: I recognize a quorum. I notice the absence of any members of the third party but, pursuant to our agreement at the outset of these proceedings, we will proceed.

Section 4:

Mr. Chairman: When last we met, Mr. Kanter had a motion on the floor. I will read it again for those of us who have forgotten what it was. You have a list of those, Mr. Philip, in the—

Mr. Philip: May I just get Mr. Hampton, though, because I thought this motion was being debated at the moment, amended by Mr. Runciman.

Mr. Chairman: No, Mr. Farnan's motion.

Mr. Philip: Mr. Farnan's motion?

Mr. Chairman: Yes, but we moved from that to this, because this had been stood down to debate it.

Mr. Philip: When is Mr. Farnan's motion coming back up, then?

Mr. Chairman: When we finish with Mr. Kanter's motion, whenever that is.

Mr. Kanter moves that section 4 of the act, as set out in section 4 of the bill, be amended by adding thereto the following subsection:

"(2a) A bylaw or regulation under this section does not apply so as to prevent the sale or offering for sale of goods and services exempted under subsection 3(5) or (7) from the operation of section 2."

Mr. Kanter: I have spoken on this motion previously. Just to repeat, the intent is to allow bona fide tourism operations, lodging or food, liquor-related or nonliquor-related, to be carried out on Sunday without interference from local municipalities. That is the intent. I do not have any further comments.

Mr. Chairman: Do any further members wish to comment?

Mr. Philip: I would just like to ask Mr. Kanter a question. Since it is the intent of this legislation to allow municipalities the right to keep stores open on Sundays if they wish, and since the normal product that many tourists buy is liquor, why is it, then, that his government feels that he is

allowing the municipal option for practically everything except the one item that the tourists seem to most request when they come into a city on their holidays? Would he like to explain that strange paternalistic attitude by this government that says local municipalities can decide everything except those matters related to liquor?

Mr. Kanter: I think that question may be a touch facetious. However, to treat it perhaps a little more seriously than it was intended, the government, as a retailer in this case, has announced that it is choosing not to be open on Sunday, just as a number of other retailers have declared they would be. The government happens to be in a monopoly situation in this case. As Mr. Philip is well aware, there was some discussion a while back about the government not being in a monopoly situation. That was not a view favoured by his party, as I recall.

Mr. Philip: The rationale as I see it, though, is that we have heard countless representations by various merchants who say that they are going to be forced to remain open on Sunday one way or another if a shopping centre decides to open and if the municipality decides, either voluntarily or because they see commerce going across the border to the neighbouring riding, as has happened in so many of the western provinces, particularly British Columbia. I am wondering why it is that merchants are going to be in a position of having to open, whereas those government merchants—namely, the ones who are selling liquor—can have this great recess and luxury of a Sunday that so many of the other merchants are not going to have as a result of this legislation.

Mr. Chiarelli: Is the New Democratic Party going to open liquor stores in 1992 when it forms the government?

Mr. Chairman: Any further questions?

Mr. Philip: I just wonder if Mr. Kanter would have a reason for which he wants to exercise this government monopoly. It seems to be the position of this government that everyone may end up working on Sunday except for government civil servants and members of the government. I really wonder why it is that liquor stores are so sacred that they should be protected. There are liquor stores that are located in malls. They are in my riding.

If that mall decides to remain open, if the municipality decides to give them that privilege, then all of the stores in the mall would remain open except the one store that is owned by the taxpayers or by the government in this province. I wonder what rationale the government has that it feels it can protect its own employees but not the employees of private enterprise companies. Why is government enterprise so sacred to this particular government?

Mr. Chiarelli: They have the freedom to make a choice.

Mr. Chairman: I think Mr. Kanter has answered, I suppose, as much as you will get.

Mr. Farnan: I would like to make a comment on that, Mr. Chairman.

Mr. Chairman: Let me see if any other members wish to speak.

Mr. Runciman: I may in a few moments, Mr. Chairman. I would like to know what section and what—

Mr. Chairman: Oh, I am sorry. We are debating the motion that we were on when we last left. It is Mr. Kanter's amendment adding subsection 4(2a). It is the one that says, "A bylaw or regulation under this section does not apply so as to prevent the sale or offering," etc. I think in your bundle it is the third—

Mr. Philip: Mr. Chairman—

Mr. Chairman: No, no, no.

Mr. Philip: Mr. Ballinger did not hear my remarks, so I think I should repeat them, then, for his sake.

Mr. Chairman: It is the fifth one from the back, Bob.

Mr. Runciman: I do not know what bundle we are dealing with here. Is it the bundle we received today?

Mr. Philip: While we are waiting, Mr. Chairman, Mr. Ballinger pointed out to me when he was in Washington how useful it was that he was able to go out and buy certain liquid refreshments on Sunday.

Mr. Ballinger: I never said that at all.

Mr. Philip: I wonder whether Mr. Ballinger or any other members of the Liberal government can tell me—particularly Mr. Ballinger, since he has just come in—why liquor stores should somehow be exempt, and therefore closed, as a matter of provincial law on Sundays when other merchants can remain open?

Mr. Chairman: Excuse me just a second.

Mr. Ballinger: I want it put on the record that that was never discussed. Did you dream that last night, Mr. Philip?

Mr. Philip: No, I never dream anything like that.

Mr. Chairman: Just a second.

Mr. Ballinger: That discussion has never taken place and you know it.

Mr. Philip: Mr. Ballinger has never appeared in my dreams, Mr. Chairman.

Mr. Chairman: Just a second. Mr. Philip. That was not the case under section 2, so therefore what you are debating is really not relevant to the amendment we are now discussing, and I so rule.

Mr. Philip: I will not tell which member did appear in my dreams. Let everybody guess.

Mr. Chairman: Having done that, if Mr. Farnan has something to say within the framework of this amendment, I will hear it; but if it is going to go into the question of booze or no booze, I rule that it is out of order.

Mr. Philip: Mr. Chairman, on your ruling, may I just have a clarification? This clearly indicates that the exemption is for those that are already exempted under the act. Is that not the case?

Mr. Chairman: That is right.

Interjection.

Mr. Chairman: I do not know. Excuse me just one second. You may be right. I just want to—

Interjections.

Mr. Chairman: Just give me one second, Mr. Farnan.

Mr. Farnan: Can you direct us to the motion that we were discussing, because I think there is some ambiguity.

Interjection.

Mr. Chairman: No, that is right. It is an amendment of the former act, and that act is not included.

The section that is being dealt with does not include anything about alcohol.

Mr. Farnan: I wonder if you could provide us with copies of the amendment, Mr. Chairman.

Mr. Chairman: You have copies of it.

Mr. Farnan: I am asking if you could provide me with another copy of it.

Mr. Chairman: Oh, sure; the clerk will give you one. I was wrong. It does —

Mr. Philip: That is the section that allows them to exempt liquor stores.

Mr. Chairman: Yes, that is fine.

Mr. Philip: And that is why I am asking why it is that liquor stores are so sacred that they can be exempted, whereas all other stores are included?

Mr. Kanter: Could I perhaps try and assist Mr. Philip in that regard? The current act, and under our proposed amendment the future act, would prevent municipal regulation in the area of licences under the Liquor Licence Act. That is the act, as I understand it, that relates to bars and restaurants, not the act that relates to liquor stores. They are, I believe, under the Liquor Control Act or something of that nature. Therefore, I would agree with your ruling that discussion of liquor stores is not in order with respect to this clause.

Mr. Chairman: Having had that clarification—this sounds as if I am going back and forth—I go back to the ruling that it is out of order. I will entertain your questioning, as long as it is within the framework of the amendment.

Perhaps we will move on to Mr. Runciman while Mr. Philip is trying to—Mr. Runciman, do you have any —

Mr. Runciman: Well, no, I was just curious about the same point, Mr. Chairman, and the fact that when the question was posed in the House—by a member of our caucus, to be precise—the minister rose in his place and indicated that, in his view, under the proposed legislation, the liquor stores in the province would be opening on Sundays, as I recall. Then he was, I assume, molested in the government lobby by members of the Premier's staff, and prior to stepping out in the hall he did a complete turnaround in terms of the position of the government of the day. I just suggest that perhaps Mr. Philip's concerns are appropriate in respect to this legislation. I guess we have to get over that hurdle initially.

Mr. Philip: I can understand why section 7 might be included, because that deals with pharmacies, as I recall. But subsection 3(5)—

Interjection.

Mr. Chairman: Yes, subsection 3(5) is clearly—

Mr. Philip: Subsection 3(5) is the operative one.

Mr. Chairman: It is restaurants.

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Mr. Philip: Clause 3(5)(a), "of liquor under the authority of a licence or permit issued under the Liquor Licence Act;" and (b), "of goods or services under the authority of a tourist establishment licence under the Tourism Act."

Mr. Runciman: I wonder, Mr. Chairman, if we could not get some clarification from legal counsel in respect to this? I respect what Mr. Kanter is saying as well, but I suspect there may be some confusion in respect to licensed establishments—hotels, lounges, etc. But here we are talking about a retail dispenser of alcoholic beverages, and it seems to me to be more in line with the kinds of things that we are covering in this legislation or dealing with in this legislation.

Mr. Chairman: Would you like to come forward? I think we are addressing specifically clause 3(5)(a). It has been indicated that some clarification is needed there as to whether or not that refers just to restaurants or to liquor stores.

Mr. Ritchie: Thank you, Mr. Chairman. My name is John Ritchie.

The current subsection 3(5) has two clauses to it. Clause 3(5)(a) deals with premises licensed under the Liquor Licence Act, and that means pubs, bars and restaurants that sell alcoholic beverages. It deals only with that type of licensed premises, not with government stores that are regulated under the Liquor Control Act.

Then of course, clause 3(5)(b) deals with establishments licensed under the Tourism Act. Those are establishments that basically provide accommodation and are not involved in the sale of alcohol and are required to have a licence under the Tourism Act. So both of those types of establishments are exempted, and have been since 1976, under subsection 3(5).

Mr. Chairman: Okay. Any further questions, Mr. Philip?

Mr. Philip: Is it your understanding that, under the present act, liquor stores would be exempted along with other retail stores, which I believe is the question that some of my Conservative colleagues asked in the House? Is it your understanding that, under this act, government retail liquor stores could, in fact, be open on a Sunday if the municipality so decided?

Mr. Ritchie: Under the amending Bill 113?

Mr. Philip: Yes.

Mr. Ritchie: Well, you are into some difficult legal questions there, in that government stores are the crown, and I am not certain that municipalities could pass any bylaw affecting the crown.

Mr. Philip: Are you suggesting, then, that crown corporations which would have businesses in a municipality—and there are more than just liquor stores; there could be other crown corporations that have everything from bookstores to a variety of products—that all crown corporations would be exempt if the municipality decided to have open Sunday shopping?

Mr. Ritchie: Crown agencies can be a different matter, in that they do not always have the same status as the crown. In that a municipal bylaw is only of an exempting nature, there may not be any legal impediment to a municipality exempting a government liquor store, in which case it could open. But to be perfectly honest, we did not examine all the legal details, because of the government decision that they did not intend to open, so it did not seem very important to us. I am sorry. We just did not research that legal point.

Mr. Philip: What did you call the liquor stores? You did not call them a crown corporation.

Mr. Ritchie: An agency.

Mr. Philip: Would there be any difference between an agency of the government and, say, a schedule 1 crown corporation that might be operating a business?

Mr. Ritchie: In that it is of only a permissive nature, I may wish to relax my original view and say it may well be a valid bylaw authorizing opening. My first comment was I suspected it would not be, in that municipalities cannot bind the crown in any way with their bylaws. That is a basic rule of law. But on reflection, I do not think such a bylaw would bind the crown. Therefore, it would probably be valid in authorizing opening.

Mr. Philip: Am I correct in saying that this legislation would not bind a corporation either, that if the Hudson's Bay Co. decided, for whatever reason, it did not wish to open after the municipality decided it could open, then the Hudson's Bay Co. could decide not to open?

Mr. Ritchie: That is correct.

Mr. Philip: Let me give a better example. Eaton's, which is more opposed to the idea, could decide to close or open as it saw fit?

Mr. Ritchie: That is correct. The municipal bylaw would only be permissive. If the bylaw permitted opening, the storekeeper could still choose to close.

Mr. Philip: Am I correct in saying that under this legislation, should a municipality decide to go for open Sunday shopping, there would probably be strong arguments from the mall and from the merchants in that mall that the liquor stores should remain open on Sunday as part of the total mall complex in the same way that they would be pressured—

Mr. Chairman: That is not a fair question to Mr. Ritchie. That is not a legal question, that is a question of policy. I want to bring you back, Mr. Philip, to the amendment we presently have before us. Although you have raised an interesting point in the questions you have asked of Mr. Ritchie, it really does not have any bearing on subsection 4(2a), because he has told you clearly that it refers to the licensed premises of a restaurant. It does not deal with the Liquor Control Board of Ontario.

You may wish to consider what you might do with reference to the liquor control board, but I am going to rule that any discussion on that issue is out of order, in that it is outside of the framework of 2a, which is what we are discussing. That is my ruling.

Mr. Philip: Maybe I can ask questions of Mr. Ritchie on subsections 3(5) and (7). Under 7, we are dealing with the drugstore exemption, are we not?

Mr. Ritchie: No.

Mr. Philip: What are we dealing with under 7?

Mr. Ritchie: Subsection 3(7) deals with establishments themselves, prepared meals, living accommodation, laundromats, other coin-operated services, vehicle and boat rentals and vehicle and boat servicing and repair.

Mr. Philip: Those are basically the kind of businesses that are open already.

Mr. Ritchie: That is true. The rationale for taking 3(5) and 3(7) out of the municipal option is because these are not stores in the normal sense of the word. We are talking about laundromats, restaurants, hotels providing accommodation and that sort of thing. They are not stores in the sense that they sell goods, such as Eaton's and the other one you mentioned.

Mr. Philip: To Mr. Kanter then, are you saying that what you are trying to do with this amendment is say that the municipalities will have the power to deregulate if they want, but they may not deregulate or regulate to the point of closing down those establishments which, for historical reasons or whatever, have traditionally been open on Sunday, such as the laundromats, certain restaurants and licensed establishments? Is that the purpose of your amendment?

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Mr. Kanter: If I understand your comment or characterization, that is correct. Those establishments, primarily tourist-oriented, that have been open in Ontario at least since 1975 continue to be open without municipal involvement.

Mr. Philip: Am I correct in saying that the thrust of your legislation, therefore, is that you are going to give municipalities the right to open various types of establishments on Sunday, but not to close establishments that are already open on Sunday?

Mr. Kanter: No, that is not correct. You have to look at this amendment in the context of Bill 113 and Bill 114 as a whole. Certainly in the drugstore area we are going to be more restrictive with respect to the current tourist exemptions. They will all have to be reviewed within the next five years. I would say, in terms of the overall thrust, we are being more restrictive. With respect to the tourist area, we are saying we will essentially continue the status quo. There will be no change. It will be neither more open nor more closed than under the current status quo.

Mr. Farnan: I would like to understand that a little better, Mr. Chairman, if it is possible, just to get a handle on it.

Mr. Chairman: What is it you are unclear on? Maybe Mr. Kanter can address that.

Mr. Farnan: Maybe if I can say what I think Mr. Kanter said, he can tell me if I am wrong.

Mr. Chairman: All right.

Mr. Farnan: As a result of the legislation, everyone is closed with the exception where a municipality makes a designation that permits Sunday opening, but those stores that traditionally fell under the tourist designation will not have to go through the procedure of requesting to open on Sunday. That will remain in place.

Mr. Kanter: That is essentially correct.

Mr. Farnan: Pardon?

Mr. Kanter: Yes.

Mr. Farnan: Just one other thing. Is it possible for us to understand how broad that designation is? You mentioned laundromats, convenience stores—

Mr. Kanter: It is set out in the act that is being amended, Mr. Farnan, if you look at subsections 3(5) and 3(7).

Mr. Farnan: If an area had designated a section of town in the past as a tourist area, would that also be included?

Mr. Chairman: I do not want to interrupt, but I think you may have misinterpreted or Mr. Kanter may not have been clear on it. You are talking about designation of a tourist area.

Mr. Farnan: What I understood Mr. Kanter to say, as I expressed my understanding, is that everything is closed unless a municipality grants permission for it to open, but everything that was already open—

Mr. Chairman: If you read it, you will see it very specifically defined under subsections 5 and 7. The status quo remains. They are open. All we are dealing with is 5 and 7. Have you got a copy of the act? Maybe you would like to take a look at it, Mike.

Mr. Farnan: It would help. I did not bring it. I want to thank you, Mr. Chairman, for permitting me to pursue that, because it is really very important that we have a precise handle on this particular aspect.

Mr. Chairman: All right. Are there any further questions from any members?

Mr. Philip: I have a question under clause 3(7)(d), "rentals of vehicles or boats." One of the things that seems to be happening in the marketplace at the moment is that certain dealers, instead of selling cars, are in fact entering into rental agreements that the person who rents the car eventually becomes the owner of the car with the payment of some flat fee, etc. Indeed, if you look at the European situation, a lot of people do not simply own cars, they enter into rental agreements.

We have had the car dealers appear before this committee very upset at the possibility of being open on Sunday, and I am wondering if clause 3(7)(d) would open itself to the possibility of a car dealership, which has a combined business of rental and selling, to remain open on Sunday and do business against a competing company that, in fact, may not be in the rental business at all and may simply be selling cars. How do you deal with that?

Mr. Chairman: I think that is a question of legal interpretation.

Mr. Ritchie: Okay. That is fairly straightforward. The exemption is for establishments that rent vehicles or boats. If the establishment is also into leasing, that is, the month-to-month or year-to-year contract for use of the vehicle and it may be sold to the lessee at the end of a two-year term or whatever, it is taking itself out of the exemption if it is operating as a leasing business on one of the holidays. To stay within the exemption, they could not be doing those things. If they do those things, it is illegal for them to open. They are violating the law and subject to be charged.

Mr. Philip: Is there a definition of what a rental corporation would be as distinct from a leasing corporation? I imagine it is a matter of how long you rent the thing for or lease it for, as the case may be. How do you define the difference between a leasing company and a rental company?

Mr. Ritchie: I suspect a lot of them are into both. I am not an expert on that. The only way you would establish the difference is with evidence in court as to the meaning of the terms.

As I understand it in the business, if you are day-to-day or week-to-week rentals, then rental is the appropriate term. When it gets into month-to-month and year-to-year, they call it a lease with, as you mentioned, a possible purchase of the car at the end of the lease. It would have to be proved through evidence that they were into year-to-year leases and that this did not come within the normal, ordinary, accepted meaning of the term "rental." This would all take place on the prosecution in court.

Mr. Philip: Are there not dealers who are into all three businesses who rent? You can go to them and you have got a multiplicity of options. One is, you could buy a car; the other is, you could rent it for a short period; and the third is, you could enter into a longer-term lease arrangement that may end up in your option to buy or may not end up in your option to buy.

I guess my question to you is, with this exemption—and I understand why it is necessary to have rental vehicles available for return on Sunday and maybe for rental on Sunday—how do you draw the line when you get companies that are into all three and are mixable? How do you decide when they are really open for selling cars as distinct from leasing cars and as distinct from renting cars? How do you police something like that?

Mr. Ritchie: It is, as you suggest, an enforcement problem. If there are goods available for sale, the establishment has taken itself out of the exemption and, again, it is subject to be charged. You are back into section 2, which says that no establishment shall have goods for sale or offer for sale on a holiday. If enforcement officials go in and they see people buying goods or they see them available for sale, again the firm is subject to be charged and it would be a case of evidence being brought out in court that the goods were for sale or offered for sale, therefore bringing the firm in violation of the law.

Mr. Philip: So if I go out and I rent a vehicle and I bring it back on a Sunday and I say to the dealer, "I like this particular model. I have driven it for a couple of weeks and I want to buy it," his obligation would be to say: "That's fine, but today is Sunday. We are not allowed to sell cars on Sunday, only to rent cars on Sunday. Therefore, come back on Monday and I will talk to you about it"?

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Mr. Ritchie: That is technically correct.

Mr. Philip: If he does not do that, if he in fact says, "I could probably make you a deal for \$16,000 on this particular model," then he would be in violation of the act?

Mr. Ritchie: That is correct.

Mr. Farnan: I do not know if we have met Mr. Philip's point.

Mr. Chairman: I think he has the answer he was looking for.

Mr. Philip: I think it has been clarified considerably, and I really appreciate the clarification.

Mr. Chiarelli: You are beside yourself, Ed. Wipe the smile off your face.

Mr. Farnan: I do not know if anyone welcomed Mr. Philip back from Australia.

Mr. Chairman: We did.

Mr. Chairman: You have a question, Mr. Farnan, and we would like to get on with this.

Mr. Farnan: I just wanted to comment on the input that Mr. Philip gives to these hearings.

Mr. Chairman: With all due respect, Mr. Philip does give input, but we are not discussing that; we are discussing the amendment.

Mr. Farnan: I thought you might wish to join me in that recognition.

Mr. Chairman: I just did.

Mr. Farnan: In clause 3(7)(c), and I hope you will bear with me on this, the reading here is "laundromats and other coin-operated services." I would ask Mr. Kanter, what are the other coin-operated services similar to laundromats?

Mr. Kanter: I would like to refer this to legal counsel. I think it is more a legal definition question.

Mr. Ritchie: My recollection is this came originally from the Ontario Law Reform Commission report back in 1970, so I am not sure of the details, but it would involve machines that dispense candy, machines that dispense change, machines that dispense cigarettes, car-wash machines where you put your money in and the car is washed, storage lockers at bus stations; anything you can put a coin into and get some kind of service or goods in return.

Mr. Farnan: One of my concerns—and maybe this is an attempt to save the government from itself, which we are always on guard for, as faithful members of Her Majesty's loyal opposition—is that there could be an interpretation of this clause that would permit amusement arcades to be open on Sunday if, indeed, we are talking about coin-operated services.

I know that this would be a service, it is entertainment, and it is certainly coin-operated. I know that in the municipality I served on it is something that it would be very adamantly opposed to.

Mr. Chairman: Mr. Farnan, places of amusement are open. If you look at section 6, 7 or 8, I cannot remember which one it is.

Mr. Chiarelli: They tried to close down Baskin-Robbins last week.

Mr. Farnan: I am sorry, Mr. Chiarelli is interrupting me.

Mr. Chairman: If you look at section 8 or 9, I cannot remember which one it is, it actually preserves amusements. Is that right, Mr. Ritchie?

Mr. Ritchie: Yes. Subsection 6 exempts any establishment in which the public is entertained, amused, educated, so that there will be an overlap in the case of the pinball and the game machines. You could say they are either exempted under subsection 6 or under clause (c) of subsection 7.

Mr. Farnan: I am sure the parents of Ontario will be thrilled to know that pinball machines and amusement arcades are a priority of this government and that this legislation will permit their availability to their children seven days a week.

Mr. Chairman: It is not this legislation; it is the legislation that is being amended.

Mr. Farnan: But by this legislation it will be permitted, is that what you are saying?

Mr. Chairman: No. The status quo is being maintained.

Mr. Farnan: It is the status quo that is permitted now; therefore the status quo means it continues to be permitted?

Mr. Chairman: That is right, according to Mr. Ritchie's interpretation.

Are there any further questions? Are we ready to vote on this matter? Do

you wish a recorded vote? Does anybody wish a recorded vote? Does anybody wish a vote?

Mr. Kanter: Yes.

Mr. Chairman: A recorded vote? No? All right. Those in favour of Mr. Kanter's amendment?

Mr. Kanter: Sorry; we would like to have a recorded vote on this, please.

The committee divided on Mr. Kanter's amendment, which was agreed to on the following vote:

Ayes

Chiarelli, Collins, Kanter, Philip, Sola.

Nays

Runciman.

Ayes 5; nays 1.

Mr. Chairman: We now move back to Mr. Runciman's amendment of Mr. Farnan's amendment. Mr. Runciman, I think you were speaking to this on the last occasion.

Mr. Runciman: You will have to remind me, Mr. Chairman.

Mr. Chairman: I was afraid you might ask that. This is the one about malls.

Mr. Runciman: Yes. I moved the amendment to the amendment really as a result of the concerns expressed by members of the government party regarding Mr. Farnan's amendment, specifically the concerns about the definition of shopping mall. Mr. Farnan, during his comments, had clearly indicated he was receptive to a friendly amendment that perhaps would be more acceptable to the majority of members of the committee. I am attempting to find a middle ground that the government members can perhaps live with.

This definition was one of a number provided by our research officer. Upon review, it struck me as perhaps the most appropriate interpretation or definition of shopping mall, one that would stand up to close scrutiny and one most of us can live with as a realistic definition. I think Mr. Farnan would be the first to admit that the definition provided in his amendment—"means a group of two or more stores that maintain a common parking lot"—was rather restrictive. Most of us would have difficulty living with that kind of overly restrictive definition.

I think he wanted to provide something along these lines to at least allow the committee to have a full and thorough discussion in respect to what he and, I believe, our party are attempting to achieve in respect of this particular section of the bill. I think the amendment to the amendment I have provided—"In this section 'shopping mall' means a group of retail stores and other business and service establishments in an integrated building arrangement operated under common ownership or diverse ownership under unified control involving common parking areas and mutual easements"—is a definition

that, as I said, hopefully Mr. Farnan can accept and members of the committee will be prepared to accept.

The intent of Mr. Farnan's motion and my amendment to his amendment is really addressing something that has been obvious to all of us as members of this Legislature in dealing with this question, and that is the fact that mall owners—I emphasize "owners," not necessarily operators of businesses resident in malls, but more specifically mall owners—and perhaps some of the larger chain operations resident in those malls have been the main proponents of the government's Bill 113 and Bill 114.

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Without a doubt one source of concern, certainly in my office and I suspect in the offices of other members, has been employees working in malls across this province who are very concerned about the implications for them in terms of the government's legislation. I think Mr. Farnan's amendment and my amendment to subsection 4(2b) of his amendment is a positive step in the direction of addressing those concerns, hopefully alleviating them, and moving on with legislation that will more appropriately address the needs of the people of this province.

We know that many of the mall owners operate on the basis of a flat rental fee plus a percentage of gross revenues, so it is in the interests of mall owners, as they see it, to have operations within the malls functioning on a seven-day operation basis. If they could have it seven days, 24 hours a day, I am sure they would be trying to pressure tenants to move in that direction. In some instances, indeed, they are, with 24-hour grocery store operations, etc.

At this juncture, I would very much appreciate hearing the views of Mr. Farnan with respect to my amendment to his amendment.

Mr. Chairman: Mr. Chiarelli first and then Mr. Farnan.

Mr. Chiarelli: I appreciate the attempt by Mr. Runciman to improve the motion of Mr. Farnan. The overriding factor here, in my opinion, in not supporting Mr. Runciman's motion is that subsection 4(2a) is still there governing 4(2b), whether it is Mr. Farnan's subsection 2b or Mr. Runciman's 2b. It is, and I will read it again, "Despite any other provision of this act, no"—and I emphasize "no"—"retail business establishment located in a shopping mall may open on a Sunday."

Using that as the main premise, I then look at either Mr. Farnan's or Mr. Runciman's motion for subsection 4(2b) and it tells me that at a three-, four- or five-store mall on any street in any community, if one of the stores opens on a Sunday, a Baskin-Robbins, then under either Mr. Runciman's or Mr. Farnan's subsection 4(2b), that Baskin-Robbins store shall close.

In my community of Ottawa West, for example, there is a Shoppers Drug Mart of perhaps 5,000 square feet that is open on a Sunday. There are five or six other stores in that mall. That Shoppers Drug Mart, under this subsection 4(2a) and either subsection 4(2b), shall be required to close.

I think that either of those motions, Mr. Farnan's or Mr. Runciman's, would create undue hardship for neighbourhoods and communities. Just as importantly, it would create undue hardship for the owners and proprietors of

small convenience stores and small retail outlets of the type that are permitted to be open now and would be permitted to be open under Bill 113.

As I said of Mr. Farnan, the Ontario Convenience Stores Association would probably hang him from the highest post if it knew he was proposing such a motion, subsections 2a and 2b. I would say the same would apply to Mr. Runciman's motion.

In addition, if you look at Mr. Runciman's 2b, I would be of the opinion that you can even apply that to a business improvement area. If you had a news stand, an ice cream shop or a book store open in a business improvement area in any community or neighbourhood, you might very well be forcing them to close under Mr. Runciman's 2b. I think this particular motion under either Mr. Farnan's or Mr. Runciman's subsection 2b would create havoc with the present Retail Business Holidays Act or the proposed Retail Business Holidays Act.

I think the problems we are having with 2b indicate how complex this legislation is. When we are dealing with opening or closing retail establishments and we get involved in the issues of definitions, we get involved in a hornets' nest. As we know, one of the reasons why the present legislation is before us is the monumental number of loopholes and court challenges that came to pass under the old, or present, legislation. I believe that by having definitions such as Mr. Farnan's or Mr. Runciman's, we are inviting a horrendous slate of challenges to the legislation in the courts. My feeling is that although there is good intent with Mr. Runciman's motion, it is equally unworkable and I certainly would not recommend it.

Mr. Farnan: I can only speak about Mr. Chiarelli; I do not know about any of the other members of the committee. He seems to have missed the purpose of what committee hearings are all about. It is a co-operative exercise, working together mutually to find solutions to problems.

Mr. Chiarelli: It is writing a workable law.

Mr. Farnan: Absolutely. It is essential in that regard and in that purpose—to write a workable law—that we have to work together. In order to work together, we have to listen. I think I said this before, but we have to listen. It is abundantly clear to me, from Mr. Chiarelli's comments, that he is not listening. I think the major thrust of the motion I presented and of the amendment put forward by Mr. Runciman is to find wording that will make it impossible for the major malls, the very large department stores to open on a Sunday. If Mr. Chiarelli did not hear that, he has not been listening.

Mr. Chiarelli: Why do you want to close the little mall down?

Mr. Farnan: For over three hours, I spoke in presenting this motion. I challenge Mr. Chiarelli or any other member of the committee to go back to Hansard. They will find that the entire thrust of that statement was to be able to provide wording for this legislation that would make it impossible for the majors, the large malls to be open.

Mr. Chiarelli: Define "major." Are you prepared to define "major"?

Mr. Farnan: In presenting this motion, I am very proud to say that I have championed the cause of the convenience stores, the mom-and-pop stores and the small retailer.

Mr. Chiarelli: Are you prepared to define a "major"?

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Mr. Farnan: Now it is very important to me that the motion be viewed in the light of precisely what it sets out to do, and that is to look at those groups that have pushed the government to bring forward this legislation and to say to those groups, "No, you will not be able to open on a Sunday."

I know that every small retailer in this province, every small convenience store, every mom-and-pop store, would be enthusiastic about the intent of the motion I put forward and presented in great detail. I believe that if the government and if Mr. Chiarelli were being honest, they would accept the premise. The premise is that we defend the small store owners who traditionally have opened and we want them to continue to enjoy that privilege.

Mr. Chiarelli: You are doing the opposite with this amendment.

Mr. Farnan: However, what we want to do is to guarantee to the small owner, particularly the small retailer, that he will not be subjected to the pressure of losing his market share to the large mall.

Mr. Chiarelli: Would you define "large mall"?

Mr. Farnan: I pointed out that all of the evidence before us—

Mr. Chiarelli: How can you talk about a large mall without defining it?

Mr. Chairman: Mr. Chiarelli, please.

Mr. Farnan: I want to thank you, Mr. Chairman, for your interjection. I thought it was rather slow in coming this time. The number of interjections I have had to put up with from Mr. Chiarelli is certainly inexcusable. It is very unbecoming of any member. I think it is rather sad that people elect a member from Ottawa—

Mr. Chairman: Why do you not—

Mr. Farnan: —and then his only contribution is to shout abuse rather than listen. I think that is part of the problem, Mr. Chairman.

Mr. Chairman: Okay. I have ruled Mr. Chiarelli out of order and perhaps you would get back to—

Mr. Chiarelli: I am just trying to get him to think right.

Mr. Chairman: —the question at hand. Mr. Chiarelli, you are out of order.

Mr. Farnan: Of course, Mr. Chairman, as I pointed out before, it is very difficult to listen when one is constantly just shouting abuse. If Mr. Chiarelli could contain himself and listen to my words of wisdom and my insights, I am sure he might be educated—I am positive he would be educated. Certainly, he may actually become more informed and have a better grasp of the issue. It is not surprising to me—

Mr. Chiarelli: Solomon is resurrected.

Mr. Chairman: Mr. Farnan, return to the subject. Mr. Chiarelli will not interject. Let's get on with the issue at hand. Go ahead, Mr. Farnan.

Mr. Farnan: I appreciate your assurance of that, Mr. Chairman. However, experience convinces me that even your assurance is no guarantee for Mr. Chiarelli's good behaviour.

Mr. Chairman: Mr. Farnan, you are out of order. Get back to the issue. Mr. Runciman, you are next.

Mr. Chiarelli: I will be quiet now, Mr. Farnan.

Mr. Farnan: Let me say again that the purpose of the statement and the purpose of the motion I have presented is very clear, "Despite any other provisions of this act, no retail business establishment located in a shopping mall may open on a Sunday."

That intent was very clearly defined. During the course of my presentation, I recognized the fact that the definition in subsection 4(2b) was a definition that perhaps did not fit. I encouraged members to participate in a co-operative way to find the right wording that would exclude majors from opening on a Sunday and that would at the same time allow the convenience store, the mom-and-pop store, the small retailer, to remain open if it wished.

Mr. Runciman: Mr. Chairman, with Mr. Farnan's permission, perhaps I may briefly interject. Based on Mr. Chiarelli's concerns that he has expressed here, and I think they are valid in talking about "major," I think both Mr. Farnan and myself are attempting to achieve something here that is acceptable to the government.

I would like to suggest a further change to my amendment to the amendment so that it would read, Mr. Chairman, if you would allow me, "In this section, 'shopping mall' means a group of"—this is the change—"20 or more..." I hope that will answer Mr. Chiarelli's question: How do we define a major shopping centre? Perhaps we can work from there. Sorry for the interruption.

Mr. Chairman: All right. We will deem it that you have withdrawn your motion as you presented it and that the amendment is now as you have indicated.

Mr. Philip: That was a problem that I had with both the motion and the amendment and that is why I discussed it with Mr. Runciman. I think that solves my concern as well. I would not want to eliminate the small strip malls which do remain open on Sunday as a tradition, or some of them do. I think I had suggested 25; Mr. Runciman feels 20. We could argue one way or the other, but I think that does solve the problem that I would have had in dealing with this motion as amended.

Mr. Chairman: Okay. Mr. Farnan, you still have the floor.

Mr. Farnan: I want to congratulate Mr. Runciman, because basically I think what we have just witnessed is a demonstration of the kind of co-operative approach to the solving of a problem. Mr. Runciman has demonstrated that he is looking at the problem co-operatively and he is working to find a solution. Indeed, Mr. Chairman, you will recognize that as I

spoke on the original motion, that was the invitation I made to all members of the committee, that we apply our collective experience to come up with a wording that would fit the bill. I want to say again what it is we want to do. We want to make it impossible for large malls to be open on Sunday and, particularly, to have large department stores open on Sunday. Again, I think it still needs working on. However, we are closer, with the change that Mr. Runciman has made, to getting that balance.

Mr. Runciman has reaffirmed my concern for the convenience stores, for the mom-and-pop store, and it is certainly in the interest of the small retailer, as well, that the intent of this particular motion be carried through to its completion. But what we should be trying to do, and I would ask the parliamentary assistant to answer this question before I continue with my comments, because it is very pertinent to my comments: Will the parliamentary assistant give the committee an assurance that both he and the members of the government who are working on this committee—

Mr. Ballinger: What a fine group they are.

Mr. Farnan: —Will he work with the opposition members in order to find the wording that will make it impossible for the large department stores and for the large malls to be open on a Sunday?

Mr. Chairman: I am not sure that that—

Mr. Philip: Not to be open on a Sunday.

Mr. Farnan: Not to be open on a Sunday.

Mr. Ballinger: We have been working consistently with you since last spring—

Mr. Kanter: Unaccustomed as I am to breaking into Mr. Farnan's comments while he is in full flight, this is a rare and unaccustomed opportunity. I may take advantage of it for 20 or 30 minutes. This is most unusual. We have been trying to work with opposition members as closely as we can when they make reasonable suggestions. I can think of one occasion when we accepted an amendment that, I believe, Mr. Philip proposed as to the length of time that notice should be received. This afternoon I noticed with some interest that Mr. Philip supported an amendment that I moved. We will undertake to continue to try to work with the opposition when it makes reasonable suggestions.

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Mr. Philip: Therefore, you would be willing to support the position of the three million people under the Coalition Against Open Sunday Shopping, who agreed that section 4 should simply be withdrawn, and they would be willing to work with you at improving a new section.

Mr. Kanter: First, you are putting words into my mouth, and second, you do not have the floor.

The Vice-Chairman: If I can just interject for a minute on a point of clarification, I know Mr. Kanter was in and out of the room and I wonder if he is aware of the fact that Mr. Runciman has changed his motion to indicate 20 or more retail stores.

Mr. Kanter: Yes, I am.

The Vice-Chairman: Is there any other comment on the motion?

Mr. Farnan: Perhaps the vice-chairman was not here when I made a request of the chairman that I was asking a question before proceeding with my comments.

The Vice-Chairman: Has Mr. Kanter completed the answer to the question?

Mr. Kanter: I have completed, yes. I would like to hear what Mr. Farnan has to say in its entirety. Then I will respond.

Mr. Farnan: Basically what I was asking Mr. Kanter was, can we have an assurance from the parliamentary assistant and the government members of the committee regarding the intent of the motion I have put forward and the amendments Mr. Runciman has made to that motion that they will work with us now to find a wording that will make it impossible for the large department stores and the large malls to be open on a Sunday?

The Vice-Chairman: I wonder if I can interject just for a minute as chairman. We do have a motion on the floor and the motion is quite specific, subsection 2a and the readjusted subsection 2b of Mr. Runciman. I believe that when we are drafting a piece of legislation, we have to deal with the words that are before us and what those words intend. It is open for any member of the committee here today to enter the debate and give his interpretation as to what these two particular subsections mean in terms of intent.

Mr. Farnan: With all due respect, I directed a question to Mr. Kanter. I do not think he needs to be protected by the chair. It is a very simple and straightforward question.

The Vice-Chairman: I understood him to say that he had answered the question.

Mr. Farnan: No, I did not hear that at all.

Mr. Kanter: To clarify, what I said was that I would like to hear the rest of Mr. Farnan's comments. Then if it is appropriate, if there is anything else I can add to the comments of my colleague Mr. Chiarelli, which I thought were well taken, and I think he is a man who does listen carefully to the debate, I will add them. I think that would be the appropriate time.

Mr. Philip: On that point, I think what Mr. Farnan is trying to do, and what I would like to see happen here, is that Mr. Farnan and Mr. Runciman have put in a certain amount of time working out one way of dealing with what seems to be a major problem that some of us have with this bill. I think what I heard Mr. Farnan saying was that if Mr. Kanter at least agreed with the general thrust of what he was trying to do, maybe it would make some sense to get some other ideas out on the table.

We would be willing, as an opposition, to hear any other ways in which Mr. Kanter might propose to do the same kinds of things that Mr. Runciman and my colleague Mike Farnan have suggested. We would not necessarily be committed to moving in this one specific way, but we would be willing to look at a variety of ways of achieving this general objective. I think that is why we

have been asking the government members, and Mr. Kanter in particular, if we can at least get some idea of whether he agrees with the thrust of the motion. Then we would be quite willing to see if the government has a different way of doing this and then perhaps either stand down or discuss the possibility of working out something together.

Mr. Kanter: The amendment that is before us is less unreasonable than the amendment that was originally before us. I do not think it is acceptable at this point.

Mr. Chiarelli, as a member, as opposed to Mr. Chiarelli in the chair—two totally different personae—pointed out very clearly that he was concerned about the situation of a small store, traditionally open, that might happen to be located in a big mall. I think that is a very valid concern which continues even under the amended version.

There are situations in communities where malls are not always automatically regarded as evils. I was sort of stricken by a comparison with George Orwell, at least, with the original motion and, to some extent, with the subsequent motion, because it assumes that stores in malls are automatically bad and stores outside of malls are automatically good. I do not think that is necessarily always the case.

I agree with Mr. Chiarelli that subsection 2a is the operative provision here. A provision that distinguishes between retail business establishments located in malls and others might stand a stronger chance of being struck down by a court. I am advised there are some other legal counsel who take that view.

So my answer is that this particular amendment would not be acceptable from the government's point of view. I do not wish to preclude, I do not want to be interpreted as precluding and I do not think our actions have indicated we would be precluded from considering other proposals that the opposition party or parties might put, in concert or separately, to try to improve the bill. Indeed, that is what we are here for.

Mr. Philip: May I ask a question about the legal opinion that Mr. Kanter seems to have? Would he be willing to table that legal opinion?

Mr. Kanter: I do not have a written legal opinion, I have an oral legal opinion.

Mr. Philip: What would lead Mr. Kanter to believe—and I assume he means a Charter of Rights and Freedoms argument—that it would be any more successful under this kind of provision than it would be if someone wished to challenge, for example, the government deciding to keep liquor stores open while wine stores owned by Barnes, for example, might be closed under this legislation? How would there be a distinction in that? I mean, under this legislation, you are already keeping some stores open and some stores closed.

The Vice-Chairman: If I can interject, we will give Mr. Kanter the opportunity to answer.

Mr. Kanter: I would like to answer the question, even though I believe it relates to an issue somewhat peripheral to this particular act. As we have tried to make clear, this act may permit some retailers to stay open if they choose. There is no compelling any retailer, however large or small, private or public, to stay open. That is the point I tried to make in the

previous discussion and I repeat it now. There is nothing in this legislation that would require any retailer to be open against his or her will.

Mr. Farnan: I want to say, just in concluding my remarks, that the record of today's proceedings will show clearly and unequivocally that an invitation was made to the government to join the opposition parties in finding suitable wording that would make it impossible for the large department stores and the large malls to open on Sunday, and that invitation was refused. The question was put to the parliamentary assistant on two distinct occasions and, on both occasions, we had prevarication and evasion.

Mr. Kanter: Mr. Chairman, on a point of order: I know there are some synonyms to the word "prevarication" that are considered unparliamentary, and I would ask Mr. Farnan to withdraw it.

Mr. Farnan: What are the synonyms?

Mr. Kanter: I am just not sure whether "prevarication" might be one of those words that Mr. Farnan ought not to use. I would ask your opinion on that, Mr. Chairman.

The Vice-Chairman: Perhaps we will just have a consensus and ask Mr. Farnan to be a little more cautious in some of the language he is using and ask him to continue.

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Mr. Farnan: I certainly do not see anything at all that needs to be questioned in my remarks. I said there was prevarication and evasion and that is basically what took place. The question was very direct.

Mr. Ballinger: In your opinion.

The Vice-Chairman: Mr. Ballinger.

Mr. Farnan: I am prepared to put it in those terms.

Mr. Ballinger: Thank you. Qualify that.

Mr. Farnan: Certainly; I would be happy to do that. Mr. Ballinger, I want to commend you on what I believe is the first positive contribution that you have made at this stage.

Mr. Ballinger: Don't press your luck.

The Vice-Chairman: Mr. Farnan, I would hate to interrupt on a positive note but we do have Mr. Runciman's motion before us and I would ask you to restrict your comments to the substantive—

Mr. Farnan: To the substantive element of my motion and the amendment to it. The reality of both is a request, a very simple request, to this government to join with the opposition parties to put a halt to the driving force behind this legislation. We all know—

Mr. Ballinger: Cut it out.

Mr. Farnan: —that it is the majors. It is the Cadillac Fairviews of this world that are pushing the government.

Mr. Ballinger: You do not have a clue.

Mr. Farnan: The question that was raised time and time again by delegations from every walk of life that appeared before this committee was, who is in favour of this legislation? Very often, they answered the question themselves. We all know it is the friends of the government in high places—

Mr. Ballinger: That is a bunch of bunk.

Mr. Farnan: —that this legislation is being foisted on the people of Ontario.

Mr. Ballinger: You sit there with a straight face—

Mr. Farnan: The opposition parties continue to say to the government, "Work with us to provide a wording." I think we would be the first to agree—I made it very clear in my statement, and certainly Mr. Runciman, by the changing of his own wording, made it clear that he is continually working to find the right phrasing that will permit convenience stores, the mom-and-pop stores, the small retailers, to remain. You can still have, according to the direction we are talking about, your municipal option, wrong as it may be. You can still permit small retailers to open.

But once you take away the large majors, once you take away the possibility of large department stores and large malls opening, you take away the threat to the small retailer who will only open in response to the possibility of the loss of his market share.

Mr. Ballinger: You are assuming everybody is going to open.

Mr. Farnan: The Liberal government—

Mr. Philip: They did in British Columbia.

Mr. Ballinger: That is a bunch of bunk. It is different in BC than it is in Ontario, Ed, and you know it.

The Vice-Chairman: Mr. Farnan wishes to continue. Could we please refrain from the interjections?

Mr. Ballinger: I am sorry, Mr. Chairman. It is hard to contain when one's —

Mr. Philip: The Liberals in Australia do not even want to open Saturday afternoon.

Mr. Ballinger: I do not care about Australia; we are talking about Ontario.

Mr. Philip: They are a civilized society.

The Vice-Chairman: Mr. Ballinger, I have your name down as a person who wants to participate in the debate, in turn.

Mr. Farnan: I appreciate that interjection and for bringing order to the committee because without that order, it is impossible to—

Mr. Philip: He gets more order from the chair than he does from the bench.

The Vice-Chairman: Two different hats.

Mr. Philip: You are doing fine. Carry on.

Mr. Farnan: I do ??welcome the invitation that was made today that we can move forward from here positively because I think this is, in my view, a critical issue. The people of Ontario know why the government is moving ahead with this legislation. They know the only people who are in favour of it and they know that the Liberal government is pandering to that powerful lobby, that vested interest group.

Mr. Ballinger: That is a pile of caca poo.

Mr. Farnan: The invitation that we are making to you is this: Let's remove the possibility of allowing—

Interjection: Did you get that from Blind River, Bill?

The Vice-Chairman: I would like Mr. Ballinger to spell that last word he used for Hansard.

Mr. Runciman: Define it.

Mr. Farnan: As I was trying to say, and I do hope that I will be able to make this statement without being interrupted, but I realize that when you are making a statement that cuts to the heart of the issue, that is embarrassing for the government and exposes the government and what this government is doing, it brings out in the government members on this committee a very negative and nasty streak as they, through constant interjections, attempt to deflate or take away from the seriousness and the importance of the issue. That is a tragedy because it is an issue—

The Vice-Chairman: I wonder if you could comment—

Mr. Farnan: As I was saying, interruptions take away from the importance of the issue.

The Vice-Chairman: —on subsection 4(2b), please.

Mr. Farnan: It is equally tragic that it is not only the members of the committee, but it appears now the chair is taking part in this kind of interruption to undermine what is a very important and central issue.

Mr. Ballinger: Then stick to the issue and quit making outlandish statements about what the government has or does not have in mind and who is in whose pocket.

The Vice-Chairman: Can we have some order, please?

Mr. Farnan: Need I say more?

The Vice-Chairman: Mr. Farnan, when I call people to order and ask

them to cease their interjections, I would hope that you would take the opportunity to continue with your debate rather than continuing to dwell on the issue of the interjections, which will only serve to exacerbate the situation.

Mr. Farnan: I certainly do not want to put your interjections on the same level as Mr. Ballinger's. As the chairman, I think perhaps there was some justification.

Mr. Hampton: He is the departing chair.

Mr. Farnan: As the departing chairman. Now I have to get used to a new chairman again and find the level of flexibility that this chairman will allow. It is very disconcerting for a member who is trying to make a point to be attacked from all sides, from government members who just—

Mr. Hampton: The peanut gallery.

Mr. Farnan: —I do not know, are nutcrackers or the professional interjectors—

Mr. Hampton: The Blind River boy.

Mr. Chairman: Blind River Bill.

Mr. Farnan: Let me try again.

Mr. Chairman: Are we still discussing the same amendment as when I left? If we are, would you please get back to it.

Mr. Farnan: Let me finally—

Mr. Ballinger: You can't keep up the cheap shots.

Mr. Farnan: —say the small retailer on Main Street in Cambridge and the small retailer on Ainslie Street or Wellington Street in Cambridge and the small retailers right around the province will look at the Hansard today and they are going to see very clearly—

Mr. Ballinger: And will buy a pair of rubber boots when they read yours.

Mr. Farnan: I am not going to be allowed to make this point because it is embarrassing. I can feel it already.

Mr. Chairman: I do not know whether it is or it is not. I just think it is a travelogue of Cambridge.

Mr. Farnan: It is embarrassing for the government. The small retailers of this province are going to look at the Hansard today and they are going to see that Hansard will record that the member for Cambridge and the member for—Mr. Runciman, the member for?

Mr. Runciman: Ottawa something or other.

Mr. Kanter: Your riding.

Mr. Runciman: Oh, my riding.

Mr. Farnan: The member for Leeds-Grenville.

Mr. Chiarelli: Mr. Runciman is looking for a promotion.

Mr. Farnan: The small retailers of this province are going to see in Hansard the record of mutual co-operation on the part of the Conservative member for Leeds-Grenville, the New Democratic member for Cambridge and our united representatives of both the Conservative and the New Democratic parties on this committee and the people of Ontario are going to see that we, as a combined opposition, put forward absolutely the most constructive suggestion to this government, a way in which it can go ahead with all of its local options and all of the other things that the people are saying are wrong.

But do for the people of Ontario what we ask you. Work with us. Work together with us to provide a wording that will say to those large department stores, those large malls, "No, you cannot open on Sunday," and my friends, the small retailer will applaud the government's participation in such an exercise. The small retailer will say to himself, "This is indeed a way out." It is a way out for the government, from the embarrassing position that you have put yourselves in.

Mr. Ballinger: In whose opinion?

Mr. Farnan: In the minds of the people of Ontario, you have taken totally the wrong tack on this issue. Here is an opportunity—

Mr. Ballinger: Why don't you take your pulpit out in a tent somewhere and travel around. I hate being preached at. Jimmy Swaggart has nothing on Mike Farnan.

Mr. Chairman: Thank you, Mr. Farnan. You are finished, are you?

Mr. Farnan: As I was saying, Mr. Chairman—and I regret that kind of rude interjection from Mr. Ballinger.

Mr. Ballinger: You are going to get a lot more, if you keep preaching like that.

Mr. Farnan: I have to try and recollect my thoughts, because one strives to make one's contribution as concise and focused as possible, but as one is constantly interrupted, it makes it extremely difficult. You, Mr. Chairman, are an individual who appreciates concise and focused comments, and I, as a member of your committee and working with you over the summer, have tried to co-operate in that way as much as possible. But, again, it is too bad that members like Mr. Ballinger—whose sole purpose appears to be to disrupt the co-operative workings of this committee—

Mr. Ballinger: Excuse me, Mr. Chairman.

Mr. Chairman: A point of order.

Mr. Ballinger: I do not mind sitting here as a member of the committee. But, quite frankly, Mr. Farnan, I have sat through weeks and weeks of your tantrums and you are off in the boondocks, with your pile of crap that you are trying to convince us is coming from the heart. If you want to talk about a game, you are the biggest player at the table. If you want to start talking realistically about the issue, let's do it.

Mr. Chairman: Is your point of order that he has avowed a motive to you, Mr. Ballinger? If it is, I would agree that you, Mr. Farnan, have in fact avowed a motive, and I would say that Mr. Ballinger has avowed a motive to you. So both of you are out of order. I can tell you, Mr. Farnan, you have said that I enjoy concise statements. I would ask you at this time to crystallize and be concise.

Mr. Farnan: As I was saying, I do believe that what we are at is a historic moment in the life of this committee. It is a historic moment in the sense that here is an avenue by which the government members can join the Conservatives and New Democratic members of this committee. We all know who would be pleased if the large department stores were not to open on Sunday. If we could guarantee that the large department stores would not open on Sunday, who would be pleased?

I will tell you who would be pleased. The retail workers of this province would be delighted. They would have a guarantee that one day of their week would be saved for family and other activities. We know that the small retailers of this province would be delighted, because they could not be forced to open on Sunday to try to protect the market share that was moving to the large malls and the large department stores. The municipalities of this province would be delighted because the municipalities would not have to be subjected to the pressure of the large department stores and large malls as they push the local councils for bylaws that would allow them to open on Sunday.

We heard an individual delegation in Orillia sum it up beautifully. He said, "How can the little municipality stand up to those big business interests, those big malls, if Toronto cannot stand up to them, if the provincial government cannot stand up to these big malls?" How in God's name do we expect a small municipality to stand up to them?

The municipalities will be delighted and families will be happy if we work together, government and opposition members, to ensure that the quality of life for families is protected by guaranteeing that the large mall does not open on a Sunday. The church groups of this province will also be delighted. Church groups have appeared before us, and like every other group in the province, they have asked us, "Let us have a common pause day."

The all-party task force of the Legislature, which reported previous to this committee, brought forward and recommended the message that a common pause day should be maintained. So I say to you that we are, in discussing the combined motion and amendments, at a historic point. Neither the member for Leeds-Grenville (Mr. Runciman) nor myself, the member for Cambridge, are saying that we have the magic words. What we are saying is that we have the right intent, that the intent we are putting on the table is what the people of Ontario want. The invitation we are putting on the table is an invitation that the people of Ontario want. The people of Ontario really want—

[Interruption]

Mr. Chairman: I think there is a fire or something. They are getting awfully close.

Mr. Farnan: You will do anything—

Mr. Chairman: I am not going to sit here and burn, that's for sure.

Mr. Farnan: Mr. Chairman—

Mr. Chairman: I think they are coming to this building.

Mr. Philip: Can we adjourn for five minutes to find out whether the building is on fire?

Mr. Chairman: No. There is an alarm, I am told by the clerk. So we will continue. I am sorry, Mr. Farnan; I was moved.

Mr. Farnan: The invitation that we are putting out this afternoon is the crucial invitation that will please the people of Ontario. Every sector that appeared before this committee—whether it is unionized labour or individual retail workers, whether it is single mothers, REAL Women, children that appeared before us, church and civic groups—all of them were saying that the domino effect will come in because it had the driving force of these large business interests and if we as a group could send out a message that we are prepared to work co-operatively, think of the radical change in perception that would give to the people of Ontario.

As the people of Ontario watch these hearings, their perception is—sad to say, Mr. Chairman, because I know you as an individual to be a fine, upstanding, honourable man—but their perception of the Liberal government, of which you are a part, is that this government which ran on an open and accessible platform is extremely closed and, dare I say it, arrogant.

1710

Mr. Ballinger: Whose perception did you say? All the people in Ontario? Boy, are you really off base, Mike.

Mr. Chairman: Are you prepared to give Mr. Ballinger a few seconds or is this an interjection?

Mr. Ballinger: You have tunnel vision like nobody I have ever met before.

* Mr. Philip: The representatives of three million people today cannot get a meeting with the Premier, even though they have asked for one since March 21.

Mr. Ballinger: Oh, come on. Cut it out, Ed. Come on, let's get in the game.

Mr. Philip: March 21; three million people asking for a deputation.

Mr. Ballinger: You are the opposition. You have got a job to do.

Mr. Philip: I bet Hudson's Bay doesn't have to wait until March 21 to get an appointment with the Premier, although he gets \$5,000.

Mr. Chairman: Order.

Mr. Ballinger: That is the dumbest comment I ever heard.

Mr. Chairman: Order.

Mr. Chiarelli: Can Hansard show that Mr. Philip has a smile on his face?

Mr. Chairman: I do not think Hansard kept up with that.

Mr. Philip: Mr. Ballinger smiled when he answered the question I asked.

Mr. Chairman: We are all smiling. Let the record show.

Mr. Ballinger: I like your smile. I just do not happen to like your politics.

Mr. Philip: I am a good-natured person who believes in presenting my arguments in a friendly way. I smile when I present my arguments.

Mr. Chairman: Why don't you and Mr. Ballinger go outside and smile at one another?

Mr. Philip: As Mr. Ballinger has said so many times, "Ed, you're a real fun guy." I even heard him say that on TV once.

Mr. Ballinger: I have the greatest respect for you, Mr. Philip. It is Mr. Farnan who is bothering me.

Mr. Farnan: I am so pleased to hear that.

Mr. Chairman: Go ahead, Mr. Farnan.

Mr. Philip: Am I being complimented or insulted?

Mr. Chairman: I am not sure. I would waive a ruling on that one. Go ahead, Mr. Farnan.

Mr. Farnan: Mr. Chairman, I wanted to—

Mr. Chairman: I want you to hurry up because you may be late for the wedding.

Mr. Farnan: I wanted to say, quite seriously, that there is—

Mr. Philip: The wedding was between the people of Welland-Thorold and the New Democratic Party. It was quite successful.

Mr. Chairman: Did Mike pick out the colour for the carnation? Go ahead, Mr. Farnan.

Mr. Philip: Actually, in answer to that question, the problem is that I normally used to buy the carnations and they were orange. Now that we have television in the House, orange shows up as red and we would not want to in any way be associated with that colour.

Mr. Chiarelli: You did it for two years.

Mr. Philip: We did it for two years because we were telling them what to do. When we were running the shop, then we didn't mind.

Mr. Chairman: Let's get back to the—

Mr. Philip: Green actually shows up as white. Being the party that really believes in purity, Mr. Chairman. I'm sure you understand. We do not

mind being associated with that colour, rather than the other colour. Either way, then, it just seems like a white carnation.

Mr. Chairman: I am biting my tongue, but go ahead, Mr. Farnan. You are still on.

Mr. Farnan: You know, I recall back in 1984 during the leaders' debate—

Mr. Chairman: Does this deal with the mall amendment, Mr. Farnan?

Mr. Farnan: —one of the leaders saying, "You had an option, sir." You all remember that phrase, "You had an option, sir." I say to you today that you have an option. There is a very serious—

Mr. Ballinger: It's called a local option.

Mr. Chiarelli: You had an option, too. You did not have to let the Liberals win the last provincial election.

Mr. Chairman: All right. I have been casual, but I am going to be hard-nosed from this point on. Go ahead, Mr. Farnan.

Mr. Farnan: Thank you, Mr. Chairman. I am glad that you are able to tell us in advance that you are putting on your tough—

Mr. Chairman: My mean face.

Mr. Farnan: —role because it is difficult, as I said, when the chairman is changing, and also the personality of the chairman is changing, for an individual member of the committee to find that flexibility that fits the different temperaments.

But the government members on this committee do have an option. The option is to take the intent, as we propose it, to take the will of the people and to work together. How the perception of this government would radically change if indeed Mr. Kanter were to say: "Yes, Mr. Farnan, we will work with the New Democrats and we will work with the Conservatives and we will work together to find the right wording that will not allow these large department stores to open."

I can tell you, without any shadow of a doubt, that I think the people of Ontario would be shocked, because they have become used to a certain degree of arrogance on the part of this government, but would be delighted to see a change, a reversal in that kind of closed-mindedness, that straitjacket thinking, that aloofness, if indeed the parliamentary secretary could say: "Yes, we'll work with you." The invitation, I want to say to the parliamentary secretary and to the members of the government—

Mr. Chairman: Mr. Chiarelli wishes to know if you would allow him to ask a question. My advice would be no.

Mr. Chiarelli: It is a legitimate question.

Mr. Chairman: Do you want to allow him to ask a question?

Mr. Farnan: My better wisdom is leaning towards your advice. My good colleague Mr. Philip suggests that we let him ask a question.

Mr. Philip: If I did not, Mr. Ballinger would change his favourable opinion of me, so I felt I had to be gracious.

Mr. Farnan: As I am asking the government for clear responses, I think it would be unbecoming of me if I were to limit the debate.

Mr. Chairman: In short, you are saying yes.

Mr. Chiarelli: Would you accept Bill 113 and Bill 114 in exchange for that amendment?

Mr. Farnan: With qualifications, yes. The reality of the matter is the qualification of course would be that it is acceptable to the New Democratic Party caucus and the Conservative caucus. But the qualification, in my mind, would have to be this: Will you provide a wording that will guarantee that the Bay does not open, that Sears does not open, that the big department stores do not open, that the large malls do not open?

Mr. Chiarelli: That goes way beyond the motion.

Mr. Farnan: Are you prepared, in the invitation that you make now, and I wonder if you have the permission of your parliamentary assistant to make such a request—

Mr. Chiarelli: I do not need anybody's permission to ask a question.

Mr. Farnan: No; but certainly you made an offer. I am prepared to look at that offer with qualifications, and I think you are talking the language now that is important.

Mr. Chairman: Mr. Farnan, I think we will move back to the amendment.

Mr. Farnan: Let the record show, though, that the parliamentary assistant has jumped from his seat, swiftly moved over to Mr. Chiarelli, put the clamp on Mr. Chiarelli and said, "Listen, bud, back off because we're not moving from our position."

Mr. Chiarelli: And you have quickly changed the substance of your motion to read closing sole stores which may be sole-standing stores, such as the Bay or Eaton's, which has nothing to do with a shopping mall.

Mr. Farnan: It is very important, Mr. Chairman, that Liberal members, and I have to admit they are very—

Mr. Chiarelli: Your position has totally shifted as a result of the question.

Mr. Farnan: —obedient. They toe the party line. Every once in a while the odd individual pops up and says something he is not supposed to, but the record should show that Mr. Kanter has been on the ball and has cracked the whip and has kept the troops in line. Maybe indeed, if everybody stays mum, Mr. Kanter may eventually be rewarded.

1720

Mr. Chairman: I am sure the record shows that.

Mr. Chiarelli: I am sure the record shows that Mr. Farnan has

changed the substance of his motion.

Mr. Chairman: Order. I want to take you back to the amendment. Do you have anything further to add?

Mr. Farnan: I want to say this to you. With the number of interruptions I have had to put up with this afternoon, it is just extraordinary that I can keep any concentration on the issue. Here I am appealing to the government for co-operation to work together to respect each other. Let's be honest. What are we looking for here? We are not looking to have abuse thrown across the table. We are not looking for interjections that are just smart alecky.

Mr. Chairman: Mr. Farnan, I am going to call you to order again, and this is the last time I am going to call you to order. You are not talking about the amendment. Please get to the amendment. That is what we are here for.

Mr. Farnan: I do detect a very serious note in your voice and demeanour. Therefore, I will certainly move quickly now to wrap up.

In conclusion, let me just simply say the invitation remains. I am sure I can say on the part of my entire caucus—the member for Leeds-Grenville (Mr. Runciman) will have to speak for his caucus—and I can say this without question, the New Democrats are prepared to work with the government to find a wording that will ensure that the majors do not open.

Mr. Ballinger: That's the fifth time you've said that.

Mr. Farnan: For the last time—and I am going to yield the floor right now, but I want to yield it in this way. I want to yield it by eyeballing the member for St. Andrew-St. Patrick (Mr. Kanter), parliamentary assistant to the Solicitor General, and saying to him my invitation to him is to work with the New Democratic Party and, I believe, the Conservative Party; to work co-operatively with us to find a wording that will guarantee that the large department stores do not open on Sunday; to work co-operatively with us so that the large malls do not open on Sunday. The answer to this question is simply yes or no. It is not a prevarication or an evasion. It is yes or no. Will you give a yes or no answer to that question? Will you work with the New Democrats and the Conservatives to find the kind of wording that will erase the fears of many of the people who are concerned about this legislation?

Mr. Chairman: Thank you.

Mr. Farnan: I would like to hear the answer of the parliamentary assistant. It is a very direct question that I put to him.

Mr. Chairman: I think that question has already been asked, and I think that question has already been answered.

Mr. Farnan: What was the answer?

Mr. Chairman: We will read about it in Hansard.

Mr. Farnan: What was the answer? There was no answer. Let the record show that Mr. Kanter, when he was eyeballed by the member for Cambridge and a straightforward question was put to him, had no answer. He was absolutely evasive. He refuses to answer.

Mr. Ballinger: It was a good answer. You just didn't like it, that was all.

Mr. Farnan: There is no answer.

Mr. Chairman: The record will say whatever it says.

Mr. Farnan: The record will show that Mr. Kanter refused to answer the question and, in refusing to answer the question, has really said to the people of Ontario: "We do not care about you. We are going to do what the hell we like."

Mr. Ballinger: Get off your soap box, will you, before you fall off it?

Mr. Chairman: Mr. Ballinger, order. Are there any other members who wish to speak to the matter before we vote?

1730

Mr. Chiarelli: I have just a very brief comment to make and that is that I can only repeat that Bills 113 and 114, particularly Bill 113, are very complex and complicated under the old legislation and, in terms of definitions and legal implications, certainly under the new legislation as well.

We saw in the course of the committee hearings, even in the select committee hearings in the last parliament, the tremendous problem people had in terms of defining "tourism." It could not be done.

Mr. Chairman: Mr. Chiarelli, I do not want to interrupt you. You are talking to an amendment.

Mr. Chiarelli: I am. I am talking about complex definitions and I am talking about the definition of "shopping mall" and "majors." It is all well and good to talk in terms of controlling majors. What we have here is the motion that by the express words of the mover of the motion is intended to control majors through the definition of "shopping mall."

When confronted directly with the issue—"Are you prepared to make some concessions in other parts of the bill in exchange for accepting your definition of 'shopping mall'?"—he then shifts ground to say, "We have to find some way to stop the majors," which by implication means that if there is an Eatons or a Bay some place that is not in a mall, they have to be closed, too. The intention of the person who moved the motion is not even included in the motion because we are talking about shopping malls in a specific term of this definition.

At the same time, he is saying—

Mr. Farnan: You are just explaining that you are not prepared to work with the opposition.

Mr. Chiarelli: I am saying that—

Mr. Farnan: You are saying you are not prepared to co-operate.

Mr. Chairman: Mr. Farnan—

Mr. Farnan: You are saying, "We won't co-operate." Simple.

Mr. Chairman: Mr. Farnan, order. You had your chance.

Mr. Farnan: Mr. Chiarelli likes to talk when I am speaking. Surely I can talk when Mr. Chiarelli is speaking.

Mr. Chairman: Mr. Chiarelli, are you finished?

Mr. Chiarelli: I would certainly be willing to give Mr. Farnan his right to interject as long as he lets me finish when he is finished.

Mr. Chairman: I am not prepared to give him his right to interject or any of you the right to interject.

Mr. Chiarelli: I would like to continue my comments. That is, in dealing with a very complex piece of legislation where we can talk in terms of ideas, principles and motherhood, when it comes down to good, technical draftsmanship, there are some things which simply cannot be done. One of the things we are trying to do with this motion is close down the majors and it does not say a darned thing about closing down the majors. It talks about shopping malls.

Mr. Farnan: Are you prepared to help us close down the majors?

Mr. Chiarelli: I am prepared—

Mr. Farnan: Are you prepared to help us close down the majors?

Mr. Chiarelli: Are you prepared to let me answer—

Mr. Farnan: Are you prepared to help us close down the majors? Come on. Are you? Yes or no?

Mr. Chiarelli: Are you prepared—

Mr. Farnan: Are you prepared to close down the majors?

Mr. Chiarelli: I will answer your question.

Mr. Farnan: Answer yes or no.

Mr. Chiarelli: Will you listen?

Mr. Farnan: Are you prepared to close down the majors? Yes or no?

Mr. Chiarelli: Are you prepared to define "majors"?

Mr. Farnan: Are you prepared to close them down?

Mr. Chiarelli: Are you prepared to define "majors"?

Mr. Farnan: Of course you are not prepared to close them down.

Mr. Chiarelli: Are you prepared to define "majors"?

Mr. Farnan: The parliamentary assistant just went down and told you.

Mr. Chiarelli: Are you prepared to define "majors"?

Mr. Farnan: He told you you cannot. In fact, he told you you have nothing to say.

Mr. Chairman: Order.

Mr. Chiarelli: Mr. Chairman, I think I have the floor in this debate. What I am trying to say is that we are dealing with a motion, the motion on subsection 4(2b), and it indicates, "In this section 'shopping mall' means a group of two or more retail stores and other business and service establishments in an integrated building..." etc.

I understand that the intent of that is to close majors. I can only say that we are here in clause-by-clause analysis and we have people moving motions and debating sections of a bill that are going to become part of the law of Ontario. Quite frankly, I am disappointed immensely in how sloppy the draftsmanship has been in a number of the motions presented by the opposition. This motion on subsection 4(2b) out of the mouths of the movers of the motion does not even address the issue they want it to address. I think that if we are going to get serious in this committee hearing, we should get a lot more technical and a lot more precise in the motions we move so we know what we are talking about.

Mr. Farnan: Are you prepared to help us with that? Are you prepared to help us—

Mr. Chiarelli: Mr. Chairman, I am finished my debate.

Mr. Farnan: No way. You got the word from the parliamentary assistant.

Mr. Chairman: I have Mr. Runciman and then Mr. Philip.

Mr. Philip: Mr. Chairman, I would just like to respond to Mr. Chiarelli for a minute.

Mr. Chairman: Mr. Runciman had indicated he wished to speak.

1730

Mr. Philip: I just wanted a couple of minutes to respond to Mr. Chiarelli's problem.

Mr. Chairman: You and Mr. Chiarelli can go outside and discuss it. Mr. Runciman, you are on.

Mr. Runciman: I know that earlier on, Mr. Kanter indicated that once Mr. Farnan had completed his remarks, he might have something to say. I wanted to make sure he was provided every opportunity to provide that response, if indeed he has one to offer us. I know he indicated that early on, and I am just wondering if he does have any response to offer us at this point.

Mr. Chairman: I think he is shaking his head, "No."

Mr. Kanter: My comments would be exactly the same as those during the course of Mr. Farnan's speech. I listened very carefully—

Mr. Ballinger: It is not like Mr. Farnan; he does not need repeating.

Mr. Philip: On a point of order, Mr. Chairman: I cannot hear Mr. Kanter, because Mr. Ballinger keeps interjecting.

Mr. Chairman: That is not a point of order. Go ahead, Mr. Kanter.

Mr. Kanter: I tried to indicate as clearly as possible that this amendment was not acceptable but that the government continues to be amenable to working with the opposition on ways in which we can realistically and practically improve this bill, as we have in the past with the examples I gave of the extended time period or the exemption to allow tourist operations to continue, things where we and the opposition have been able to agree. We will certainly support those kinds of motions, but for the reasons that Mr. Chiarelli and I have both explained, this amendment is not acceptable.

Mr. Chairman: Thank you. Are you ready to vote?

Mr. Runciman: No, Mr. Chairman, I would like to make a few comments, because Mr. Kanter has indicated that my amendment to the amendment, I am assuming, is not acceptable. He has also said that he and his party are amenable to working with the opposition parties to try to achieve some resolution of concerns. I think initially Mr. Farnan's amendment was intended to meet that request, and my amendment to his amendment again tried to address the concerns that the government members have been bringing forward.

Mr. Chiarelli's question earlier, posed to Mr. Farnan in respect to this amendment, I think was an interesting one. The fact, of course, that the parliamentary assistant immediately moved to his shoulder was also interesting to observe in respect to the reaction, and I wonder if it was not an overreaction.

Mr. Chiarelli raised concerns about the question of definition. Again, I immediately tried to respond to that concern by being more explicit in terms of the kind of definition that he was looking for. He raised the question of majors. I think that essentially this definition goes some way towards dealing with that concern. I would hope that, while perhaps it is not the ideal, working together, we can achieve something that is acceptable to all three parties.

We simply have to have an indication that that receptivity is there. Contrary to all of the words, we want to see some definitive action on the part of the government. Rather than just say they are amenable to working with us, let us see something constructive happen. We are constantly being pictured as obstructionists in terms of the hearings process. Here is an effort to attempt to address what is probably the major concern out there in terms of the public, and that is dealing with the malls and the large, major operations for the most part operating out of those kinds of malls.

This goes some way to meeting that concern. If we can work to achieve some sort of resolution of our mutual concerns in this area, it is going to be beneficial for all of us as legislators and for the perception of this parliament and future parliaments, instead of simply arguing without any real effort to attain some sort of middle ground. I think that is the way the public perceives this process: that the government has set views in respect to what it is attempting to achieve, and that is to not back away from its original commitment in any way or means; and perhaps that the opposition parties are not really there to achieve any meaningful option or alternative,

either. I hope that is a misconception, that there is indeed a willingness on the part of all parties to try to find some middle ground that we can all live with and that is going to answer the concerns about open Sunday shopping that currently exist among the majority of residents of this province.

Mr. Ballinger: Maybe in the eyes of the opposition.

Mr. Runciman: You know, Mr. Ballinger got quite upset when Mr. Farnan mentioned the fact that many of the major supporters of this legislation are significant players in the retail sector, and perhaps one could suggest that some of them are members of the 1,000 club, or whatever it is that the Liberal Party of Ontario operates, whereby you gain access to the ear of a cabinet minister by making a contribution of \$1,000. It might be interesting to see how many of those contributors are indeed operators of some of these major retail operations in the province.

On the basis of the initial reaction of Mr. Chiarelli, on the basis of Mr. Kanter's indication that he wants to be, and his party wants to be, amenable to constructive proposals on the part of the opposition parties, I think that instead of his making a snap judgement on behalf of his party today and running over to Mr. Chiarelli when he indicated some willingness to consider alternatives, it may be in the best interests of all concerned that this matter be tabled until his caucus can deal with it. Mr. Chiarelli's proposal to the opposition parties can be dealt with in our caucus, so that perhaps we can get back here tomorrow, when indeed we do have some middle ground where we can achieve something that is going to be acceptable to all three parties. It may be pie in the sky, but I think it is worth the effort.

I am not sure what the procedural options are here, but either I would like to suggest that this be tabled at this juncture or, if that is not appropriate, I would be prepared to move that we adjourn at this juncture so that all parties have an opportunity to consider the ramifications. I would so move.

Mr. Chairman: You have moved that we adjourn. That is a motion that is nondebatable. Those in favour of adjournment? Those opposed to adjournment? Defeated.

You also moved a tabling motion, did you? A motion of postponement?

Mr. Runciman: Postponement until all three caucuses have had an opportunity to consider this amendment.

Mr. Chairman: Those in favour of—

Mr. Philip: Does Mr. Runciman not have an opportunity to get his member in for the vote, since it is his motion?

Mr. Chairman: If he wants it he can ask for it. He has not asked for it.

Mr. Philip: We should have some recess, then, so that if we are going to have a recorded vote, we can have the other member of this committee present.

Mr. Ballinger: With the greatest respect, we do not mind playing along, but this is getting ridiculous.

Mr. Chairman: It is a motion of deferral. A motion of deferral is nondebatable, it is noninterjectionable and it is non everything.

Mr. Chiarelli: On a point of order, Mr. Chairman: I am not sure I understood what Mr. Ed Philibuster was saying.

Mr. Chairman: Thank you for your comment, Mr. Chiarelli. There is a motion for deferral. Those in favour of deferring the amendment, presumably the amendment to the amendment by Mr. Runciman? Those in favour?

Mr. Philip: Can we have a recorded vote on this?

Mr. Chairman: Recorded vote.

The committee divided on the motion to defer the amendment, which was negated on the following vote:

Ayes

Hampton, Philip, Runciman.

Nays

Ballinger, Chiarelli, Hart, Kanter, Sola.

Mr. Runciman: I have to share Mr. Farnan's view that this puts the lie to the government's claims of being amenable to working together.

Mr. Chairman: Are we ready to vote?

Mr. Philip: No. I want to speak to the amendment, the amendment to the amendment.

1740

Mr. Chairman: The amendment to the amendment.

Mr. Philip: I believe that my legal counsel is joining me at the table. We will also let him speak.

Mr. Ballinger: The legal counsel spoke for two hours and left.

Mr. Philip: I am talking about the one who actually has a calling to the bar.

Mr. Ballinger: So has Mike; it is just a different bar. Mike belongs to a different bar.

Mr. Philip: When I made a rather facetious remark earlier in the spirit of good fellowship, Mr. Ballinger objected. Now he is making a facetious remark about my colleague, who is not here. I am sure that knowing just the fact that my colleague is a teetotaller and an abstainer, then it has to be pointed out that Mr. Ballinger's remark is quite humorous and is meant in a spirit of congeniality rather than in a spirit of maliciousness. We can see that by the smile on his face, which again cannot be recorded in Hansard.

Mr. Ballinger: Exactly.

Mr. Philip: There are two thrusts that we saw in the more than 300 representations. As the Coalition Against Open Sunday Shopping pointed out this morning, 95 per cent were against this bill. One is that it is fairly clear that the people of Ontario distinguish between small stores and the larger stores. There is some flexibility in the minds of people as to whether or not small grocery stores, convenience stores, bakery shops, etc., should remain open on Sunday.

I think it is fair to say that, in the presentations that we got, even from the church groups who might, in a previous age, have felt that everything should be closed, basically they would not take the position taken by Liberal parties in other jurisdictions that all shops should remain closed from Saturday noon until Monday morning.

There is a distinction between the large shopping centres and the larger stores and the small stores with regard to certain types of stores that provide essential conveniences, such as the drugstores.

The second thing that came out is that there should be some provincial direction. You cannot simply give to municipalities the authority to do whatever they wish in this area. That is a principle which is kind of interesting. In those areas in which the municipalities feel they can run their own lives and can direct, in terms of certain types of merchandising, this government has said, "No, we are not going to give you that authority."

I recall not so long ago that when the city of Toronto asked for permission to control whether or not racetracks, which are a form of merchandising, could be open on Sunday, this provincial government said: "No, we have to exercise centralized control. We do not want to have anarchy. And you, municipalities, cannot have that kind of authority." The municipalities at that time, particularly the city of Toronto, said, "We want to be able to have some control over those things that affect our neighbourhoods." The government said, "No, you are not going to have that authority." The private bill that would have dealt with that was in fact defeated by this government.

I guess what we are trying to do, then, is to build some kind of rationale or sensibility into a system. What the municipalities seem to be saying is, "Yes, there are certain things that we want to have influence over, that we want to be able to make decisions about; and there are other things that are of a provincial nature where we have to at least have provincial standards or guidelines." What my colleagues have done is to try to reflect that. Maybe they have not reflected it as well as some of us would feel comfortable with, but through a process of dialogue, they have come out with an amendment that says, "We don't want the large shopping malls open on Sunday." That is a basic thing we have been hearing in those 305 briefs or whatever it was, more than 300 briefs, from those groups that have appeared before us.

Mr. Chiarelli says that does not cover a large store that may not be in a mall. I can accept that. It is one amendment. That does not preclude us moving other amendments to take into account the problem Mr. Chiarelli is facing. I can accept that this amendment does not deal with all of the problems, all of the concerns that were expressed, but it does deal with some of them. I say to Mr. Chiarelli that I think my colleagues Mr. Hampton, Mr. Farnan and Mr. Runciman have been saying, "Let's deal with this problem of large malls first."

There are other amendments. If it is the position of the government that

it at least accepts what we are trying to do, then we are willing to work with Mr. Kanter and Mr. Chiarelli and any of the other Liberal members who may wish, and with legislative counsel, and we can deal with that problem separately. This is an amendment we have tried to clarify to deal with the concerns that I think Mr. Chiarelli is right about, the small malls. It was one I was concerned about and I would not have been able, quite frankly, to support the amendment to the amendment, if you like, if there were not some stipulation in it like the one Mr. Runciman added.

Let's work with this. If Mr. Kanter and the Liberals will accept the principle of what we are trying to do, then we will be willing to work with them on dealing with some of the other problems that may surround it.

Mr. Chiarelli said this is complicated legislation. Yes, but you do not solve complicated problems by simply throwing up your hands and saying, "We can't solve them." The municipalities have said clearly: "We are willing to work with the government at coming up with a regulatory system so that there will be tough, consistent guidelines. We are willing to work with you if you will just set down section 4 of this bill, pass the rest of it if you like"—most of the rest of the bill comes out of the select committee, so you are not going to have problems with most of the rest of the bill—"but set down section 4 and we will work with you at solving some of the other problems."

We were told this morning by the Coalition Against Open Sunday Shopping, which represents over three million people in Ontario, that it has asked for an appointment from March 21 to meet with the Premier (Mr. Peterson) and the Premier has not even responded to its letters. Mr. Kanter was not at the conference, but he indicated to me that he had at least read what they said, and he probably got a report, because some of the ministry people were there, about exactly what was said.

These people were saying to the government: "Look, you haven't been listening. We are not antagonistic towards you. All we are saying is to put this bill down, or if you like, put down at least section 4 of the bill and then we will meet with you and we'll resolve some of the problems. We have the expertise. We have the people out there, but you've never even met with us. You allowed us to make presentations before the select committee." The Premier, during the election, said he accepted those recommendations. Then the Premier, five months after the election, said, "They're unworkable and we're going to go a different route." Now, of course, the Premier has refused to meet with these groups.

I do not deny the fact that the government members have a very large majority and that they can force—

Mr. Kanter: I think your colleague has lost the train of argument.

1750

Mr. Philip: Actually, my colleague has studied Zen. Mr. Kanter is referring to the fact that my colleague finds that part of the higher form of creativity is to incubate on complicated subjects and allow the gestalt to pour over him as he meditates.

Mr. Chairman: Do you think he is falling asleep?

Mr. Philip: From that, of course, comes inspiration. I refer Mr.

Kanter to an excellent book called Zen and the Art of Motorcycle Maintenance.

Mr. Chairman: We will not turn this into a commercial debate.

Mr. Philip: I think if you had sat on one of those motorcycles that are referred to in Zen and the Art of Motorcycle Maintenance, you would have noticed that the motorcyclist often was in a position not all that dissimilar from that of my learned legal colleague. Part of that position is that while he was driving those motorcycles, he was actually smelling the flowers along the side of the road and assimilating what in fact was happening in the world around him and trying to make himself at one, in harmony with the world.

My argument and indeed the argument of the presentation this morning at the press conference was that the Liberal government is not doing that.

Mr. Ballinger: Did you give another press conference?

Mr. Philip: It was the Coalition Against Open Sunday Shopping, representing over three million people. I covered that earlier, but if you wish, I would be happy to cover it again.

Basically, what they were saying is that obviously this government has not understood some of the concepts of the Zen, because if it did, it would have been less rigid, it would have been less single-minded and goal-oriented and instead would have tried to encompass some of the concerns, as we have done, as my colleague has done, in this motion.

What this tries to do is to take one step forward.

Mr. Chiarelli: One step forward and five steps backwards.

Mr. Philip: I have not seen the five steps backwards. I would be happy to have Mr. Chiarelli tell me where the five steps backwards are.

What we are prepared to do, if you pass this motion, is then we will introduce another motion for debate that will take care of Mr. Chiarelli's other problems. Of course, we can debate those at some length on another day. In the meantime, I know my colleague has been waiting very anxiously and thinking about the arguments he could best present to convince you of this, so I do not want to take up any more of his time by referring to the numerous briefs, which I could do—

Mr. Hampton: Go ahead.

Mr. Philip: I do not think that would be fair.

Mr. Hampton: I am not jealous of the time.

Mr. Philip: Essentially, what we have had is a piece of legislation about which Mr. Chiarelli says some of our motions have been ill-thought-out, but this whole piece of legislation has been ill-thought-out. When we asked the Solicitor General (Mrs. Smith) to table what research, what impact studies she had done before introducing this legislation, she could not spell out any. Indeed, the only Canadian study she could refer to in this—

Mr. Chairman: I do not want to interrupt you. It is not yet six o'clock, but there is something I want to ask the committee off the record about some of the assistance we are receiving. In light of the fact that it

looks as if you are going to be continuing beyond six o'clock, I am wondering if you would perhaps move adjournment.

Mr. Philip: I will refer to the research the minister did not do in my next comments and deal with it in another way.

The committee adjourned at 5:55 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT

EMPLOYMENT STANDARDS AMENDMENT ACT

TUESDAY, NOVEMBER 8, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Hart, Christine E. (York East L) for Mr. McGuinty

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Farnan

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Hopkins, Laura, Legislative Counsel

Witnesses:

From the Ministry of the Attorney General:

Ritchie, John M., Senior Crown Counsel, Criminal Law Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, November 8, 1988

The committee met at 3:45 p.m. in room 228.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 4:

Mr. Chairman: We will resume the discussion of Mr. Runciman's amendment.

Mr. Runciman: Believe it or not, Mr. Chairman, I think I have said about everything I have to say on this amendment.

Mr. Chairman: Are there any further members who wish to speak on the issue?

Mr. Hampton: I wanted to say that I think Mr. Runciman's amendment is an appropriate one and I think it is one that the government will be well advised to support for a number of reasons.

I think we heard many times while we were touring the province from groups or individual business persons, small business people who operate in malls, who said that the proposed protection in Bill 113, in terms of lease protection, was not adequate. The economic pressure, the pressure that a landlord can exert on them at the end of a lease, or at the termination of a lease was so great that whether the small business person wanted to or not, they would find themselves in a position of having to be open on a Sunday.

We heard from other small business groups who basically said to us, "If the malls are open then even though I may be located a couple of blocks away in a downtown core, if I want to maintain my market, there is a good chance I may have to be open too." We heard some differences as to how strong the economic pressure would be, but I think the overwhelming opinion was that business forces out there are fairly powerful in the retail trade sector. Therefore, individual small business people who may not even be in a mall but who are relatively close to it, within three or four blocks, feel that if the mall can be forced to stay open, if businesses in a mall, through economic pressure from the landlord, can be forced to stay open, then the small business person who is down the street will also be forced to stay open. So what this amendment speaks to, and I think it speaks to it very well, is to ensure that the malls stay closed, to ensure that the kind of economic pressure, the kind of very competitive business climate that a lot of small business owners are concerned about, does not get going; that the vicious circle does not have a starting place in the large shopping malls.

1550

How does this impact on many of the people who came before us? I think

it was fairly clear. We heard from a lot of small business people who said: "Look, my business is small, and I can't afford to hire more people to work on Sunday. I just don't have that kind of revenue. I wouldn't do that, taking my seven day week operation, I wouldn't be able to afford to get someone to work on Sunday. Yet, if I am to compete in the field that I am in, I would have to have someone who is experienced and knowledgeable about the product and knowledgeable about the market if I'm to staff my store appropriately."

So those kinds of small business people would really be in a bind. As they said to us, already many of them work six days a week. They do not want to work seven days a week. They do not have the time to work seven days a week. What is more, their families probably would not give them the time to work seven days a week. Yet they do not have the money to hire experienced help to work on Sunday. At the same time, what they are concerned about is if they require their existing staff to work on Sunday, it will not be long before there is an exodus of people out of their kind of market or out of their business. For example, we heard that from Sears, which basically said that it would find it very difficult to hire and to keep the kind of capable, experienced, people that it needs at the supervisory level, the sales level, and at the managerial level, if there was a requirement that they work Sundays, or even if they work some Sundays.

So the concern there is, and it is a very real concern, that the way this whole process will get going will be through the economic pressure that can be exerted by those people who own the large shopping malls, those people who already have a fair amount of money, and as we have heard through the news media, have a fair amount of political influence and can use their economic clout very easily to exert some political influence.

That is how many small business people see the circle beginning. The circle which drives us forward to wide-open Sunday shopping. So they have the concern over the large shopping malls. I think that Mr. Runciman's amendment speaks directly to that concern. He has been very careful to define exactly what a mall is and I think for that reason, it is a very effective amendment.

In his amendment, he also deals with the question of major stores. I think that is quite appropriate as well. I want to deal with that for a moment, if I may. I think the reason Mr. Runciman has singled out some of the major stores operators, and the reason that it is appropriate to do so is again, we heard in our tour of the province from some of the major store owners. We heard from the Bay and Simpsons who basically said that they want out there, they want into that Sunday market.

Because they have a very large retail enterprise and because they see an opportunity for them to essentially go out there and impose some type of Sunday working on the employees they already have, they feel that there is an advantage for them in this legislation. They feel that they are going to have a real economic advantage, notwithstanding their view that if this legislation is received by the municipalities in such a way that the municipalities put up their hands and say, "There's no way that we're going to use this legislation to bring in a Sunday shopping bylaw," notwithstanding their comments to that effect—because I think we all know what they will do then. If they face that sort of situation from the municipalities, there will be a court challenge over this whole scheme of legislation very quickly; instantaneously, one might say.

There is the concern from the small business sector and from many of the other groups that appeared before the committee that the way wide-open Sunday

shopping will get going, if not through the shopping malls, will be through the economic clout and the political clout that some of the major chain stores have and that they will use to fight their way into the market.

I think in this context it is reasonable to remember the comments that were made by the representatives who appeared before the committee from Sears Canada and from Marks and Spencer Canada and I think also the Woolworth Co. when they appeared before the committee. Those three organizations operate large chain stores.

If I can summarize what the three of them said, they basically said they do not want this legislation, they do not want anything which makes it easier to promote wide-open Sunday shopping or more open Sunday shopping. They do not want it, and they do not want it for a number of reasons: one, because they do not think there is any more money in it for them; two, because they think it will make it much more difficult for them to keep the good employees they have if they have to work Sundays; and three, it will make it difficult to attract new employees in the future, whether they be at the sales level, the supervisory level, the managerial level or the administrative level. They made that clear. Finally, if I can paraphrase what they said, they do not see any advantage in bugging the small business person. That was their view of things.

Having said that, however, they also said that where Sunday shopping laws have been passed, or through a combination of court decisions and provincial legislative inactivity, i.e., Alberta, where in both Alberta and British Columbia you now have an absence of laws which allow Sunday shopping to take place or laws which promote or make Sunday openings easier, they are saying that in either of those cases, they have been forced to open their stores and they have opened their stores. I believe all three of them said that.

Certainly I remember that Marks and Spencer said it very clearly and that Sears said it very clearly. Where the ball has gotten rolling, where a couple of major stores have opened, they have opened their major stores; and where they have opened their major stores, small business people have felt the obligation to open theirs.

I think Mr. Runciman's concern that some of the major chain stores will be the channel, the vehicle through which wide-open Sunday shopping finally comes to pass in Ontario is very well placed, and I think for that reason his amendment is very well placed in attempting to reduce the possibility or the capacity for some of the major retail chain stores to use their economic clout and hence their political clout to bring wider Sunday shopping or wide-open Sunday shopping into reality. So I would urge all members of the committee to look very carefully at Mr. Runciman's amendment and to support it.

1600

Let me say at this juncture that the Liberal members of the committee have said throughout, and the Solicitor General (Mrs. Smith) has said throughout, and I believe one could say—and I do not use this term pejoratively—that it has been the government line that this legislation is not intended to create wide-open Sunday shopping. You have repeated that widely around the province. It was one of the things that came in that neat package of notes that the Solicitor General provided for you so that you all say the same line and not get the government into hot water.

Now the debate has moved a little. The debate has moved a little in this sense. Some of us—and I will include myself in this—might be able to accept, for the purposes of argument and discussion, that maybe the legislation does not necessarily mean wide-open Sunday shopping and maybe it is not intended to create wide-open Sunday shopping. I will accept that right now for the purposes of discussion, but I do not think anybody can deny that what this legislation will do and what it is intended to do is to make for more Sunday shopping. It is intended to make that possible, available.

Having said that, I think what the government has to be concerned with then is, if it is really serious about not wanting wide-open Sunday shopping, if it really listens to the numerous groups from all sectors of our society who came to us and said, "We do not want wide-open Sunday shopping. Ontario does not want wide-open Sunday shopping," then I think at least what ought to go into this legislation is the kind of amendment that Mr. Runciman is proposing. It is a safety valve which will limit the economic power of some of the major mall owners and development companies, and it will limit the economic power of some of the major chain stores to have their way.

There should not be any mistake about it: this legislation, like all legislation, will create some winners and create some losers. Now, the government may be intending to say: "We just passed the legislation and after that the market took over. Do not blame us. This is the market working." I think it is a little late to try to make those kinds of arguments. A hundred years ago you could make the argument that, well, we have child labour because the market wants it, or we have people working 12 to 15 hours a day because that is the way the market works, or people get sick and die on the job because it is part of the market.

Mr. Chiarelli: You are not crapping on the market. You are crapping on all of the municipalities.

Mr. Philip: The local municipalities know who is crapping on them, boy. They told you exactly what they thought of you guys.

Mr. Chairman: I would appreciate it if there were no interjections by members.

Mr. Hampton: Now that the remark has been made, I have to respond to it.

Mr. Chairman: Just a second, Mr. Hampton. All that happens when there are interjections is that somebody else feels that he has the right to interject as well, and it gets into sheer chaos and this good lady down at the end of the table here to my right will get writer's cramp. So out of fairness to her, let's try to keep to the speakers.

Mr. Philip: On a point of order, just out of fairness to Hansard, the word that I used was clapping as in applause with an "l." I would not want anybody to think that I would use an impure or derogatory or nasty word about the government or unparliamentary language.

Mr. Chairman: Thank you very much for that point of order which is not a point of order. Mr. Hampton, you have the floor.

Mr. Hampton: Thank you, Mr. Chairman. I appreciate your efforts on behalf of staff who are here. I am sorry, Mr. Chairman, Mr. Philip wanted to benefit me with one of his remarks. I appreciate your efforts on behalf of the

staff, but I think Mr. Chiarelli has made a remark so I will comment on it.

The fact of the matter is that municipalities have told the government, the Northwestern Ontario Municipal Association has said it, the Association of Municipalities of Ontario and the Association of Municipalities of Ontario, large urban sector have told the government they do not want this legislation the way it is because they see it as putting them in a very difficult bind. The kind of market forces which are out there in terms of competitive business market will all fall on them and they do not want this legislation for that reason.

I do not know how many times they can say this to the government. I gather they have to say it more for Mr. Chiarelli to understand it. Otherwise, perhaps it is the case that he does not regard the municipal representatives somehow as being real, as some members of the Liberal caucus on this committee have said more than once.

Having said that—

Mr. Philip: Mr. Chiarelli was so offended that he left the room.

Mr. Hampton: It is perhaps better for all of us that he is not here to hear the rest of my remarks.

The point is that we have heard time and time again from groups from across Ontario, from every sector of the economy, small business people, church groups, large retailers, small retailers, large chain stores, municipalities, large municipalities, small municipalities, municipal organizations. We have heard from groups, legitimate, representative groups from all across the province, who said to us: "We don't like the essence of the bill. We don't like it if it means wide-open Sunday shopping." But they have also said that if these are going to be the rules they want to see some more checks and balances in it.

What I see in Mr. Runciman's amendment is essentially a check and balance which would really benefit the government's position, because the government has said time and time again that it does not want to see wide-open Sunday shopping, that this bill is not intended to promote wide-open Sunday shopping.

If that is the case, if the government can be taken at its word, then I think the government members on this committee should support Mr. Runciman's amendment, because what his amendment will do is place a control, and I think it would be a very good control, on the capacity of some of the large shopping mall owners and some of the major department stores. It will place a check on their ability to use their economic clout and their political clout to actually use this legislation to get wide-open Sunday shopping going and to manoeuvre for wide-open Sunday shopping where they see a market advantage for themselves.

In summary, I think in both respects this is a good amendment. It speaks to the problem of the large chain stores. It speaks to the problem of the large shopping malls. It says in effect that even though the opposition parties have a problem with the essence of the government's legislation, through the use of this amendment an effective check or an effective security measure can be put in the legislation to ensure that what the government says it does not want—wide-open Sunday shopping—will not in effect happen.

I hope all the Liberal members of the committee will vote in favour of this amendment.

Mr. Chairman: Seeing no other members wishing to join in the debate—

1610

Mr. Philip: I did not have an opportunity to complete my remarks yesterday. I certainly wanted to do that.

Yesterday I believe we were talking about co-operation. It seems to me that a committee like this has to co-operate in all ways among the different members of different political persuasions. What we are asking for on the part of the government is simply co-operation on this particular amendment.

We have seen the co-operation between the New Democrats and the Conservatives. I had some problems with the original motion. I expressed those to Mr. Runciman. Mr. Runciman was astute enough to see that there were problems and drafted an amendment which I think substantially relieves some of my concerns about the original motion. I think that is the kind of co-operation that is needed when we are dealing with controversial legislation that indeed stirs up certain passions among a good many people.

That is the same co-operation which those people who are opposed to the bill asked for when they asked for a meeting with the Premier (Mr. Peterson) in March 1985, a meeting which they still have not had. At least to the credit of the Solicitor General, she has granted a meeting with some of them for Wednesday of this week. We will be looking forward to hearing what compromises, changes or proposals the minister may have at that time to deal with the problem.

What you have here then is the government saying it is not in favour of wide-open Sunday shopping, but whenever any member of the opposition comes up with some proposals that will in fact make that assurance a reality, then it finds a hundred different ways as to why it cannot support it.

I can understand how a government that does absolutely no research before introducing legislation is apprehensive about any kind of changes, because it does not know the full impact of those changes. The problem then is to deal with the essential matters themselves.

The one area that they did have research on that is contained in the bill are those proposals of the select committee on retail store hours. The research was the select committee going around the province, and before it, the Conservative Party task force that came to similar conclusions. That was the basic research that was done.

What is fairly clear is that it is primarily section 4 that has been inadequately researched. Therefore to argue, as some Liberal members on the committee have, that somehow we should not go ahead with amendments of the opposition because they are not adequately researched, when in fact the whole concept of section 4 shows a complete inadequacy of any kind of research—as a matter of fact, the only research of a Canadian kind, as I pointed out in the House on Monday, that the minister was able to refer to in her briefing notes to Liberal members was research that did not exist.

The research which she says on page 2 of one of her many myths, which of course are not really myths at all and have been proven later by additional

information that we brought to the committee, obtained from the Liberal caucus in New Brunswick or from the Social Credit government or the municipalities in British Columbia—the only research that was referred to was that of Clayton Research Associates of Toronto.

When we asked, under the Freedom of Information and Protection of Privacy Act, for a copy of that study, in fact the minister admitted that it does not exist and suggested that we go to Clayton Research Associates. We went to Clayton Research Associates to ask for a copy of the research and of course Clayton Research Associates said: "Well, no, we do not have it. You are going to have to go to other sources."

We went to those other sources that the ministry claimed, namely, John Winter and Associates, about the matter. He said he did not do the research report at all that is being quoted. Instead, he offered to do research for the Liberal government, and the Liberal government never got back to him and, from his point of view, therefore never paid him to do any research. Therefore, there is in fact no research that the minister is quoting in her notes to the Liberal members.

I could buy the argument that somehow perhaps there is more research needed on the part of the opposition members, on the part of my colleague and also Mr. Runciman, who have introduced this amendment and the amendment to the amendment, were the government doing adequate research itself, but it has not. If you are going to accept the argument that our amendments are not well founded, that we have had inadequate research in developing them, then I think you have to accept that all of section 4 is ill-founded, that there have not been any impact studies, there have not even been any comparative studies with other jurisdictions.

Indeed, when we even offered to have any clerk of any large municipality in British Columbia, a completely nonpartisan public servant, come before this committee to tell us exactly what happened in British Columbia, whether or not there was a domino effect, then we in fact were told by the Liberals on this committee that we could not have it.

Mr. Chairman: Mr. Philip, I am going to bring you back. You are generally skirting around the motion before us to do with the shopping malls.

Mr. Philip: What I am trying to deal with are the arguments by the Liberals that if we introduce amendments and we have not covered all the bases, we have not covered all the exceptions, we have not covered all the problems, that because we have not done adequate research, because there is not enough information available, somehow they should simply be defeated. What I am trying to show the Liberal members is that their government has not done research on section 4, period. Therefore, if you are going to accept that argument on our amendments to section 4, then you have to accept that this also applies to section 4 and section 4 should not be dealt with at this time.

Mr. Chairman: I understand what you are saying, but I still would like to bring you back. That is something you can argue when we get to section 4 in its totality, but at the moment we are dealing with an amendment by Mr. Runciman to Mr. Farnan's which deals with shopping malls. Whether that amendment is good or bad, I would ask you to confine your—

Mr. Philip: Perhaps it was Ms. Hart who was in the chair at the time, but I believe it was Mr. Chiarelli who tried to argue that Mr. Runciman's amendment to the amendment and indeed the amendment itself were

inadequately researched and therefore, because they did not cover all the cases, somehow we should vote it down.

The argument I am trying to make to you and to other members of the committee is that if you accept that rationale, then you should not deal with section 4 at all; you should not just vote down an amendment to section 4, you simply should not deal with section 4 because section 4 has been ill-thought-out. Indeed, that is the reason why 95 per cent of the more than 300 groups that appeared before us in our hearings have said, "Don't deal with section 4 at this time."

We are quite prepared not to deal with the amendments to section 4 if the government members would simply say: "Fine, let's pass the rest of the bill. Let's put down section 4. Let's go back and talk to the public out there. Let's go back to the organizations that have said they will help us solve some of the other problems, including the tourist exemption problem. Let's deal with it in that manner." Then we would not need our amendments. We could throw out the amendments as proposals, ask those people, the government could check out those ideas and then come back to us with a new section 4 or some other legislation at some point in time.

Mr. Chairman: Again, I have to go back. I have listened so I could see how it fit into the amendment you are addressing, which I understand to be Mr. Runciman's amendment to an amendment. I do not find that you are staying within the range of that and I rule that you are out of order. If you wish to continue on that, I would be happy to hear from you.

Mr. Philip: I would challenge your ruling.

Mr. Chairman: Mr. Philip has challenged the ruling of the chair. Do you wish time to get your members?

Mr. Philip: Yes. May we have a 10-minute recess? There is a debate going on in the House.

Mr. Chairman: We will stand in recess until 4:30 p.m.

The committee recessed at 4:20 p.m.

1640

Mr. Chairman: For the record, we adjourned until 4:30. However, in the absence of representatives from all parties, I felt it prudent to wait for the 20 minutes they are allowed under the rules. We are now resuming, 20 minutes having passed.

A challenge has been made to my ruling. Those in favour of upholding the chair? Those opposed? The ayes are five, the nays are two. The chairman's ruling is upheld.

Mr. Philip: I do so without malice.

Mr. Chairman: Thank you. That is all right.

Mr. Philip: It is just that you were wrong. I happen to like you personally. I hope you will not in any way feel personally offended. That is what Ballinger said to me when he challenged my ruling. The only thing was that the Liberal members supported me that time. I have not had the same support today. You have, so I guess it was the same vote.

Mr. Chairman: Any further comments? Are we ready to vote?

Mr. Hampton: I just want to say that I do not hold it against you either.

Mr. Chairman: Good. I am glad to hear that. I will sleep better tonight.

Mr. Hampton: That is good.

Mr. Chairman: All right. Those in favour of Mr. Runciman's amendment to Mr. Farnan's amendment, please signify. Do you wish a recorded vote?

Mr. Hampton: Yes, a recorded vote.

Mr. Philip: No. Mr. Runciman is not here. He should be here to vote on his amendment. We are allowed to ask that the vote be stood down until we can get a few members.

Mr. Chairman: If you wish to do that—

Mr. Philip: Can we not have a 20-minute recess? I think Mr. Runciman should be here to vote for his own amendment.

Mr. Chairman: All right, a 20-minute period has been requested.

Mr. Philip: We did not orchestrate this. I did not ask Mr. Runciman to stay out. He told me he was going to be here for 4:30, and I think he should be here.

Mr. Chairman: All right. Could it be 20 minutes or as soon as Mr. Runciman arrives, if he arrives earlier?

Mr. Philip: If he shows up again. Why do we not try to find him? I will go into the House and see if he is there.

Mr. Chairman: Okay. We stand in recess for 20 minutes or until Mr. Runciman's arrival, whichever is shorter.

The committee recessed at 4:42.

1644

Mr. Chairman: We will resume. Mr. Runciman, we were just about to take a vote on your amendment. We will now do so. A recorded vote has been asked for.

The committee divided on Mr. Runciman's amendment to Mr. Farnan's amendment, which was negatived on the following vote:

Ayes

Hampton, Philip, Runciman.

Nays

Ballinger, Collins, Hart, Kanter, Sola.

Ayes 3; nays 5.

Mr. Runciman: Would this be an appropriate time to bring up the subject that we discussed earlier?

Mr. Chairman: I have no problem.

Mr. Kanter: Let's vote on the motion.

Mr. Chairman: It will require, as you know—well, go ahead.

Mr. Kanter: Now that our minds are turned to this subject, my suggestion would be that we vote on the main motion. I believe it is the NDP motion moved by Mr. Farnan. We have just defeated the amendment to it. I think it would be more appropriate to vote on the motion now and then we can perhaps proceed to the—

Mr. Philip: The vote should not be interrupted.

Mr. Chairman: Any problem with that, Mr. Runciman?

Mr. Runciman: No.

Mr. Kanter: I have no difficulty in dealing afterwards with the matter that Mr. Runciman wants to raise.

Mr. Chairman: All right. We now have Mr. Farnan's amendment.

The committee divided on Mr. Farnan's amendment, which was negatived on the following vote:

Ayes

Hampton, Philip, Runciman.

Nays

Ballinger, Collins, Hart, Kanter, Sola.

Ayes 3; nays 5.

Mr. Runciman: I was approached by a member of the governing party in respect to a matter that was dealt with by the committee last week, and that was the change of site for the duration of committee deliberations from room 228 to the Amethyst Room. I know my colleague Mrs. Cunningham raised that matter and last week a majority of the committee was not in favour of the proposal, but saner heads have prevailed, apparently, and there is now a change of direction.

I would again like to put the matter before the committee for its consideration. I have talked to our House leader and I am sure that Mrs. Cunningham and other members of our caucus are still supportive of seeing the committee hearings moved onced again into the Amethyst Room.

Mr. Chairman: Since there was a vote on that and it was defeated, we will require unanimous consent. Do we have unanimous consent of the members of the committee to that reintroduction? What do we call it, reintroduction?

Mr. Runciman: Reconsideration.

Mr. Chairman: Reconsideration of the motion.

Ms. Hart: Why do we not give unanimous consent to vote on it again?

Mr. Chairman: That is what I am saying.

Ms. Hart: No, you are saying to open up the whole thing. I am saying to vote.

Mr. Chairman: I presume that is the way it would be dealt with, that it would not be—

Mr. Philip: We can vote on it after the discussions.

Mr. Runciman: Robert's Rules of Order say you need three quarters—

Interjection: Two thirds.

Mr. Runciman: —or two thirds or whatever it is, to reconsider and then you carry on with the original motion, but I am not sure whether you operate on Robert's Rules of Order.

Mr. Chairman: I do not think the House operates on Robert's. If it did, things would get done a lot faster.

We need unanimous consent to move the motion and a fresh one.

Ms. Hart: What I am suggesting is that we may be prepared to give unanimous consent to vote on the matter again—to vote, not to open up the whole matter for rediscussion.

Mr. Philip: We cannot do that. The vote is for reconsideration, in which case you open it up to discussion again.

Mr. Chairman: It sounds as if unanimous consent is not forthcoming, if that is the case.

Mr. Philip: No, it is just a matter of discussing it further.

Mr. Chairman: I appreciate what you are saying, Mr. Philip, but—

Mr. Philip: In fairness to other committees that may have scheduled things in that room, we may be able to agree in principle that this committee should be in the room, but I think we should give some advance time and not simply ask that we necessarily start immediately next Monday, but rather that there be a discussion with the other committee chairmen and that it go into the other room when—

Interjection.

Mr. Philip: I think Mr. Ballinger is supporting my position on this.

Mr. Ballinger: How you can keep a straight face—

Mr. Chairman: We are actually into discussion, Mr. Philip.

Ms. Hart: Having given it a little more thought, perhaps we

can—first. I will move a motion because I do not think we have a motion on the floor, do we?

Clerk of the Committee: No, we do not.

Mr. Runciman: Just to clarify it, I have no problem with what Mr. Philip is saying. If the committee feels it is appropriate to request use of the Amethyst Room, the decision really does not lie with this committee. It is simply a request on the part of the committee to utilize the Amethyst Room. Others are going to make that decision; ultimately, the House leaders or whomever. It is simply that I have had an indication that others are prepared to consider that request, whereas they were not last week.

Mr. Philip: Okay, that solves—

Mr. Kanter: I think there is tactically a motion to reconsider on the floor.

Mr. Chairman: No, there is not. There is nothing on the floor until we have unanimous consent.

Mr. Philip: I move that we reconsider and then we will see if there is unanimous consent, Mr. Chairman, to reconsider.

Mr. Chairman: I think the way it has to go is that we have to have unanimous consent first to open up the subject. Do we have unanimous consent to open up the subject?

Agreed to.

Mr. Chairman: All right. Now I need a motion.

Mr. Runciman moves that we request use of the Amethyst Room for further deliberations of Bill 113 and Bill 114.

all those in favour of Mr. Runciman's motion? All those opposed? Those leaning on their elbows and chewing their pencil?

Mr. Philip: I voted.

Mr. Chairman: I did not see you.

Motion agreed to.

Mr. Philip: I just think it should be done with some consideration that there are other committees also, and that there are some other matters and that we are not going in there demanding it.

Mr. Chairman: I am sure the House leaders, to whom this request is being made, will consider that. They will make the final decision.

All right. Now we move on to a motion that has been placed before us. It is by Mr. Runciman.

Mr. Runciman: I don't know if all members have a copy. I do not think I do.

Mr. Chairman: While it is being distributed, I would point out as

well that I noticed in your package that a Conservative motion that read subsection 5(1) has been changed to section 4. I have looked through the bill and I cannot see how that is correct.

Clerk of the Committee: It is.

Mr. Chairman: Is it?

Clerk of the Committee: Cindy and I went over this, and it is correct.

Mr. Chairman: Which one are we—it should be subsection 5(1).

Clerk of the Committee: No, it should not. This is section 4 of the bill, subsection 5(1).

1650

Mr. Chairman: As usual, the clerk is—

Clerk of the Committee: That is section 5.

Mr. Chairman: This is what it should be. That is correct. Does everybody have a copy of it now?

Mr. Runciman moves that section 4 of the act, as set out in section 4 of the bill and as amended be further amended by renumbering section (1a) as (1b) and by adding thereto the following subsection:

"(1a) No bylaw passed by the council of a municipality under subsection 1 shall permit the sale of motor vehicles on any holiday."

Mr. Runciman, it is your motion.

Mr. Runciman: Because of the schedule and where we stand at the moment, I thought it would be appropriate to table this motion with the committee today, but I would prefer to defer debate on it, if that is possible, until our next meeting date. I say that because I personally have to leave within a few minutes.

I felt it should be tabled today with the committee so the committee would have some time to consider it, and the government members and the New Democratic Party members would have some time to consider the implications of the amendment, as well. In addition, as I have said, there are some complications in terms of my availability for the remainder of the afternoon.

Mr. Chairman: Is it agreed that it be stood down?

Mr. Philip: Mr. Cureatz will be, I understand, coming in.

Mr. Runciman: He will be in at 5 p.m.

Mr. Philip: I am sure that both I and Mr. Hampton will speak on this rather excellent motion for at least until Mr. Cureatz comes in, in which case we will want to listen to his arguments.

Mr. Chairman: This is the next motion in sequence, so I understand that we either require unanimous consent or you can move a motion and we can

vote on it, that it be stood down and we defer consideration. Is there unanimous consent?

Mr. Philip: You are standing this down, in which case—

Mr. Chairman: We are not standing it down.

Mr. Runciman: If we did, which would be next?

Mr. Chairman: The next one would be the Conservative motion, which would be the one I just referred to. It reads subsection 5(1), but it is actually section 4.

Mr. Runciman: Subsection 5(1); is that the one?

Mr. Chairman: You will notice that is has been changed. That is the next one.

Mr. Kanter: Are you prepared to proceed with that?

Mr. Runciman: I think that since Mr. Philip has been so kind as to make an offer to ensure that no resolution to this is forthcoming when I am not present, I guess I am prepared to move with my amendment today, then, because the next one in the order is something Mrs. Cunningham is going to put forward. She will be here next week.

Mr. Chairman: I suppose we could move on.

Mr. Kanter: Let's move on to the next one, to the government motion.

Mr. Chairman: We can only do that, again, if we are prepared to give unanimous consent to Mr. Runciman's motion and the one by Mrs. Cunningham being stood down. Do we have unanimous consent to do that?

Ms. Collins: I understood Mr. Runciman to say he is willing to put the motion forward, and Mr. Philip and Mr. Hampton would speak on it.

Mr. Chairman: Yes, but I am trying to move things along here, gang. If you do that, Mr. Philip has also given a further commitment, Mr. Runciman indicated.

Mr. Runciman: What one are we we talking about?

Mr. Chairman: As near as I can figure, yours would be stood down because you are going, I gather, into the House. Mrs. Cunningham is not here to deal with the next one that would be up. What I am suggesting is unanimous consent to hold those two down and get on to something else. Is there unanimous consent? Agreed.

Agreed to.

Section 5:

Mr. Chairman: The next item would be Mr. Kanter's motion.

Mr. Kanter: I would like to speak to that very briefly. It is a government motion on section 5.

Mr. Chairman: Mr. Kanter moves that subsection 6(2) of the act, as set out in section 5 of the bill, be struck out and the following substituted therefor:

"(2) A bylaw of a municipality that was in force under this or any other act immediately before the coming into force of this subsection and that relates to the opening or closing of a retail business establishment on holidays continues in force until the first day of January 1994 or until repealed, whichever occurs first."

Mr. Kanter: What this—

Mr. Chairman: Excuse me just a second. Is this a New Democratic Party motion?

Mr. Kanter: No, it is a government motion. It should have been in the package that was transmitted to the clerk. I certainly want to make sure people have it.

Mr. Chairman: Okay.

Mr. Kanter: This is essentially a technical amendment and members may wish to call legal counsel for further explanation, but if you take a look at the bill you have before you, what we essentially are doing is removing a number of words from subsection 6(2). The words now in the bill read "or until a bylaw is passed under section 4."

It was pointed out to us, by legal counsel actually, that without a further amendment, the impact of the bill would mean—let's suppose a municipality such as Metropolitan Toronto might have passed a bylaw affecting one small part of Sunday opening legislation. Let's suppose they increased the size of drugstores that could be open from 7,500 square feet to 7,600 square feet, something like that. That would have the effect of making a number of other municipal bylaws invalid.

That would mean, for example, that if the municipality of Metro Toronto increased the size of drugstores from 7,500 square feet to 7,600 square feet, tourist exemptions like Harbourfront or Mirvish Village would immediately become invalid. That is my understanding of the problem that was created under the old section.

We have tried to clarify that with the new bylaw so that a bylaw of a municipality that was in force, a bylaw, for example, of a tourist exemption nature, would continue in force until January 1, 1994, which was expected to be approximately five years from the passage of this bill or until repealed by that municipality and not to trigger it accidentally by another municipal bylaw that is passed under this section.

I have tried to explain it. I think it is essentially technical in effect. I do not know if Hansard can show that legislative counsel appears to be nodding her head in the affirmative. I am going to say it just to put it on the record. Members also may wish to consult with counsel for the Ministry of the Solicitor General to see if my explanation is correct. I hope it is.

Mr. Ballinger: Laura Hopkins's problem is that she is just new here yet, Mr. Kanter.

Mr. Chairman: Do any other members wish to comment on this or are we ready to vote?

Mr. Runciman: I think we should hear the counsel.

Mr. Chairman: do you wish to hear Mr. Ritchie, the ministry counsel or legislative counsel, Mr. Runciman?

Mr. Runciman: The ministry's counsel.

Mr. Chairman: Mr. Ritchie, would you come forward, please?

Mr. Ritchie: My name is John Ritchie.

Mr. Ballinger: Do you swear to tell the truth, the whole truth and nothing but the truth?

Mr. Ritchie: Along with legislative counsel, I would confirm all of Mr. Kanter's remarks as being accurate.

There are three circumstances in which the provision would sunset. The first circumstance is the passage of five years; that is, arriving at the date January 1, 1994. The second circumstance was where the old tourist bylaws are repealed. The third circumstance, as Mr. Kanter outlined, is where the new bylaw is passed under section 4; that is, under the new local option power.

Any new bylaw would have the effect of wiping out all the existing tourist bylaws, the intention being by subsection 6(2) to grandfather them for a time and let them live under the new legislation. The amendment has the effect of taking out the reference to the passing of a bylaw under section 4, the result being that the old tourist bylaws can be terminated in only two ways: first, by their repeal, and second, by the passage of time to January 1, 1994.

1700

Mr. Chairman: Any questions of Mr. Ritchie?

Mr. Runciman: I am still not clear about Mr. Kanter's references to the square footage, the 7,500 square feet going to 7,600 square feet and the problems that could create. Could you run that one by me?

Mr. Kanter: That was only by way of a possible illustration, but maybe he can explain it better than I can.

Mr. Ritchie: I think you probably explained it better than I could, but I will try.

All this provision in subsections 6(1) and 6(2) is talking about is the continued existence of tourist bylaws, such as those in the city of Toronto in relation to Harbourfront and Markham Village and the CN Tower. All section 6 does is keep them alive after the passage; presumably Bill 113 would be enacted in some form. Section 6 would let those existing tourist bylaws live on.

Mr. Kanter's illustration was a new bylaw passed by the municipality of Metropolitan Toronto to extend the square footage for drugstores. That would be under section 4 which is referred to at the end of this subsection 6(2) in

Bill 113; the wording I am referring to says "until a bylaw is passed under section 4." The legal effect of any bylaw passed under the new section 4, such as expanding the square footage for drugstores or exempting the Eaton's Centre or any other tourist bylaw, would have the effect of wiping out all existing tourist bylaws.

I guess that really was not thought to be necessary and is not the intention of the government at this point. Therefore, by removing these words, there would be no automatic wiping out of existing tourist bylaws by the passage of a new tourist bylaw.

Mr. Chairman: Okay. Are there any further questions? Are we ready to vote then? Is it a recorded vote?

The committee divided on Mr. Kanter's motion, which was agreed to on the following vote:

Ayes

Ballinger, Collins, Hart, Kanter, Sola.

Nays

Hampton, Runciman.

Ayes 5; nays 2.

Mr. Cureatz: Back by popular demand.

Mr. Chairman: You are just in time, Mr. Cureatz, if you would like to vote.

Clerk of the Committee: No, as a matter of fact, he cannot.

Mr. Chairman: Okay. You are too late.

The next item is the New Democratic Party—we have to deal with section 5 first. Shall section 5, as amended, carry?

Section 5, as amended, agreed to.

Section 6:

Mr. Chairman: The first item on section 6 would be the motion dealing with subsection 7(1) of the act.

Mr. Kanter: On a point of order, Mr. Chairman: Were we going to go back to the two Conservative motions we have just skipped over or are we going to continue along? I was not clear on where we are proceeding at this point.

Mr. Chairman: Which one did we skip over?

Mr. Kanter: There were two amendments that we just held down. I was not sure if we were holding them down at this point.

Mr. Chairman: I understood we were holding them down because in the

one case Mr. Runciman was the mover and in the second case it was Mrs. Cunningham.

Mr. Kanter: So you are planning to move on?

Mr. Chairman: So we are moving on.

Mr. Kanter: That is fine.

Mr. Chairman: The next one would be subsection 7(1), and we have an amendment by the NDP.

Mr. Philip moves that subsections 7(1), (2) and (3) of the act, as set out in section 6 of the bill, be struck out and the following substituted therefor:

"(1) Every person carrying on a retail business in a retail establishment who contravenes subsection 2(1) or a regulation made under section 4 is guilty of an offence and on conviction is liable to a fine equal to the gross sales of the retail business establishment on the day on which the contravention occurred.

"(2) Every person employed by or acting on behalf of a person carrying on a retail business in a retail business establishment who contravenes subsection 2(2) or a regulation made under section 4 is guilty of an offence and on conviction is liable to a minimum fine of,

"(a) \$1,000 for a first offence;

"(b) \$10,000 for a second offence; and

"(c) \$50,000 for a third and each subsequent offence."

Mr. Philip: The purpose of my amendment is to guarantee that the matter of an offence be taken as something that is serious and not simply a licence to commit an offence. In the past, we have had problems. Some people who thought their own laws were more important than the laws of parliament have seen the fines as simply licences to operate illegally.

The present bill does not set out a minimum fine and instead sets out a maximum fine, which leaves considerable discretion to a judge. Indeed, depending on how strong the prosecutor or the authorities on behalf of the municipal government feel about it, it may mean that there would be considerable fluctuation across the province in terms of offences. A retailer might commit an offence in one municipality and get a very small fine and in another municipality have a much higher fine.

What my amendment tries to do is to say that it is possible to make a mistake, in which case you will receive a small penalty. If you continue to make the mistake, it becomes a more important offence and therefore you pay considerably higher. Then, if you continue to flout the law, if you continue to violate the law, you are going to have a serious fine to contend with.

I think this graduation allows for some compassion for somebody who may in fact, through lack of knowledge or perhaps poor judgement, commit an offence, but once he has been before the courts and understands what the seriousness is, if he continues to commit the offence, he will realize just how serious it is from a monetary point of view. I think that makes more sense

than the present system which is being proposed in the bill, and I hope that government members will consider my proposal. I certainly want to hear Mr. Chiarelli's opinions on this amendment before it comes to a vote.

1710

Mr. Kanter: I think it would be useful in this case, probably at first instance, to hear from legal counsel as to his views on your amendment and how it differs from the government amendment. Then there might be further comments. I think that might be useful. There is language in the amendment to the bill that refers to the sales of the retail establishment, and I think it might be helpful to have counsel explain why the government amendment was drafted as it was in reference to and in comparison with your proposal. Then we might proceed to have further debate.

The Acting Chairman (Ms. Hart): Perhaps counsel would come forward.

Mr. Philip: I trust then I will hear from my two legal counsels, Mr. Cureatz and Mr. Hampton, after this.

Mr. Kanter: They will have every opportunity.

Mr. Philip: My goodness, I never thought I would ever say that Mr. Cureatz was my legal counsel.

Mr. Ritchie: From a lawyer's point of view, there are two primary difficulties that we have with this approach. The first difficulty is the imposition of minimum fines. Minimum fines, of course, take away the judicial discretion on sentencing. It is a well-known fact that the judiciary is very much opposed to that, and it seems to have the general backing of law reformers.

The problem is that, of course, you always end up with hardship cases, a small store, for example, run by an individual and spouse. Suppose the spouse was charged under subsection 6(2) as an employee. They are then facing the possibility of a minimum fine of \$1,000. Courts often have grave difficulty with that sort of thing and find themselves extremely reluctant to decide on the evidence that guilt been proven beyond a reasonable doubt.

That really was the first concern, binding the hands of the judiciary and not allowing it to consider the facts and the circumstances of each individual case to determine what is appropriate based on those circumstances.

An adjunct to that arises with the wording in subsection 6(1). Subsection 1 has proposed that the business be fined an amount equal to the gross sales on the day of violation. The primary difficulty there is that it is very unlikely that there will be evidence of gross sales before the court.

I remember one instance where the Metropolitan Toronto police, I think it was, did go after the gross sales with a view to getting as high a fine as possible. They did execute search warrants on this business. It was a very large business. The Metropolitan Toronto police then had to seize the appropriate records. They had to hire accountants to interpret them and arrive at gross sales figures so that they could establish that to the court's satisfaction.

In that particular instance, through a lot of work, the police were able to establish the amount of gross sales to the court, but it was a very long,

time-consuming and resource-demanding procedure. It is something that police would be reluctant to do except in very special cases. Normally there is a problem in getting evidence of gross sales before the court.

In spite of that, in the bill we have tried to suggest to the court that gross sales were a good guideline. In other words, the court should be considering the profits that the person has made by violating the law.

In subsection 3 of the bill, there is a provision requiring a court, when determining the amount of a fine, to take into consideration any evidence respecting gross sales. We tried to cover the case where it was possible to get evidence respecting gross sales, either through direct police action or possibly through cross-examining the convicted person on sentencing, if that is possible, but it may or may not be.

That was the reason we took the softer approach with respect to gross sales. As I mentioned, this really again ties in with I guess the general concern that you tie the hands of the judiciary inappropriately if you have fairly high minimum fines. That is the general background I can give you from a lawyer's perspective.

The Acting Chairman: Thank you, Mr. Ritchie.

Mr. Philip: Would you not agree that government does this on a regular basis, that there are minimum fines on a number of statutes?

Mr. Ritchie: Perhaps under taxing statutes where accountants have gone in and examined the books and they are able to establish the amount of tax money that was defrauded or withheld or whatever, but I cannot think of any circumstance similar to the Sunday shopping law where the fine relates to the amount of money defrauded or withheld or whatever the case may be. I am only familiar with those taxing examples.

Mr. Philip: Would you agree that the principle of this bill is that it is giving the municipalities the right to make certain decisions concerning, basically, bylaws, what will become bylaws with respect to businesses in their area, that that is a basic principle that is contained, at least in section 4 of the bill?

Mr. Ritchie: I guess the local option is considered the prime feature of the bill.

Mr. Philip: Basically what the bill does is give the municipality the right to make bylaws that are affecting, in this case, store hours. Would you not agree then that it is quite common in bylaws that are passed by municipalities under the authority of the province by other legislation than this, in fact, many of these bylaws do contain specific amounts of fines for certain offences?

Mr. Ritchie: I guess all bylaws contain a specific fine for an offence. Perhaps I did not understand the question.

Mr. Philip: Under the Municipal Act, the municipalities have the right to pass certain bylaws and these bylaws that are passed by these municipalities under this provincial act do in fact set specific fines for offences.

Mr. Ritchie: That is correct.

Mr. Philip: What this amendment does is to pass under this act certain specific fines for what is an infraction of a bylaw. I wonder why you feel it is better to give judicial discretion in deciding on the amount of a fine for one type of bylaw and not for another type of bylaw.

Mr. Ritchie: I do not think I am following the question, quite honestly.

Mr. Philip: My counsel said that I made an excellent legal argument, but I will try again.

Mr. Ritchie: Maybe I could clarify a little bit. I noticed that your amendments to section 7 do not impose a fine for breach of a bylaw. They only deal with breaches of the legislation or regulations made by cabinet.

1720

Mr. Hampton: That is okay. We are going to deal with that later.

Mr. Ritchie: Oh, that is to come. I see.

Mr. Philip: Essentially, in this case it would be the municipality or the police force under a complaint from the municipality, probably, or the bylaw enforcement officer who would lay a charge, even under this section of the bill. Is that not correct? The local municipality would be upset that so-and-so is open on Sunday.

Mr. Ritchie: Is that subsection 7(1) in the bill?

Mr. Philip: Yes.

Mr. Ritchie: That is the way it would work. Either the police would find the violation on their own and take appropriate action, presumably lay a charge, or there would be a complaint to the police, and again they would go out and take enforcement action. Bylaw enforcement officers would not be concerned with violations under subsection 1.

Mr. Philip: What you have is—I am not a lawyer—basically a civil matter. Somebody is doing something in business that he should not be doing. It seems to me that that is much more analogous to bylaw infractions under the Municipal Act than it is to some of the statutes, which, probably for good reason, if they are going to lay charges under the Criminal Code or if it is going to be a different type of offence, may want to leave more discretion.

This is basically a business transaction that violates the law. What this bill does then is to say: "If you are going to do this, then there is at least a minimum fine. If you do it again, it is a larger fine. If you do it still again, then it is going to be a still larger fine. We are not going to let you get off with simply arguing as a businessman that you did not know or you were not aware of it or that kind of argument. We are saying that, on the first offence, you are going to get off lightly. By then you should know about it. You are going to be hit harder the next time you do it, and the last time it is going to hurt you."

The problem some of us have is that, knowing the justices of the peace in this province—and I am not insulting them; I think the Attorney General

(Mr. Scott) is conducting a study into some of their decisions himself—there is a wide variety of decisions that come forward under some of the justices of the peace who are likely to deal with this kind of matter.

We are not talking about a criminal offence. We are not talking about a provincial court justice. We are probably talking about the local justice of the peace who decides what is going to happen to Mr. McGillicuddy and his store, and Mr. McGillicuddy and his store are in the same neighbourhood and so forth. It seems to me that under those circumstances, if you want some objectivity, then having a specific amount serves that purpose.

Let me take it from a different point of view. It seems to me that the reason they put specific fines into bylaws is that, because municipal government is closer to the people, and often the people who are enforcing rules and regulations may be enforcing them in some communities on their neighbours or people they socialize with on a regular basis, it becomes less uncomfortable, if you want, to have a specific amount.

We are not dealing with somebody's career being endangered. We are not dealing with his business disappearing from under him. We are dealing basically with matters that we know have to be law. At the same time, if we allow too much discretion, that puts unreasonable pressures on those justices of the peace who have to make some decisions about their neighbours or about other people whom they know well in their community.

That, it seems to me, is one of the reasons that bylaws have amounts put in. It takes away some of the discretion of people having to make decisions, including municipal councils, about other people who are their voters, who may be their friends, who may in fact be their campaigners, as frequently happens.

They can say: "Look, I am sorry, Charlie. You violated the law. Here is what the fine is. It is not discretionary and it is tough luck, but at least in this case it cost you only \$1,000. Make sure you do not do it again, because it is going to be a lot more expensive next time; and after that, it is going to be even more expensive."

That is what we are trying to do with this amendment. Therefore, I have trouble understanding why you would not see this more as a principle that is used in bylaw offences. I am hoping perhaps somebody who would have some experience as mayor, perhaps the mayor of Uxbridge, would know the kinds of pressures that municipal politicians are under in cases like this—

Mr. Cureatz: The former mayor.

Mr. Philip: —and would therefore be very supportive of the arguments I am making. I notice he has been taking notes and paying tremendously close attention.

Mr. Cureatz: Copious notes.

Mr. Philip: I would certainly like to hear from some people who do have some municipal experience. Mr. Cureatz, I believe, served on a council as well, if I am not mistaken. Certainly Mr. Kanter was a rather effective member of council, from everything I have heard from his constituents. I understand from Mr. Reville, who served on the same council with him, that Mr. Kanter was a good member of council; I recognize that. I appreciate people who are responsive to their constituents, who attend community meetings and do the

kinds of things that I do and that the member from Uxbridge does all the time. That is being a good politician.

Mr. Kanter: I would like to put a couple of supplementary questions to the counsel while he is here.

One of Mr. Philip's concerns, I take it, is a persistent offender. I would just like to ask legislative counsel, if there were a persistent offender who breached the law many Sundays in a row, would the court not still have discretion to increase the level of fines under the government amendments to the legislation?

Second, in section 8 of the proposed amendments, the power of the court to order that stores close, could you explain how that might fit into Mr. Philip's concern that there be strict enforcement of this legislation?

Mr. Ritchie: I think it is basic to our justice system that courts do come down less harshly on a convicted person the first time. The second time they do not have quite the same compassion, and on subsequent occasions they are going to be even stricter. That is common practice, regardless of what level of court it is.

Whether it is a justice of the peace or the Supreme Court of Ontario, if an offender is a scofflaw, then the maximum fine of, say, \$50,000, as in this particular case, gives the court a lot of scope to escalate it as the person comes back before them a second and a third time. That is why the crown always has the record of the offender available and presents it to the court, indicating any relevant convictions. There may be convictions under other provincial statutes or criminal statutes that the crown attorney may want to draw to the attention of the court. But it is very basic to the system that the fine does escalate as the offender comes back before the court a second or third time.

The whole purpose of the maximum \$50,000, raised from \$10,000, was to give the court more scope and to suggest to the court that the Legislature views this as a serious offence, wants to see escalation and wants to see very high fines as repeat offenders come back before the court again and again.

You also mentioned section 8, which, as you suggested, is intended to permit stricter enforcement. Again, it is aimed at the scofflaw and the repeat offender. It would be specific authority to go directly to the Supreme Court and seek an injunction closing down a repeat offender. In fact, it does not even require the laying of charges. It authorizes a direct application of the Supreme Court and it authorizes the Supreme Court to issue a restraining order, regardless of whether there have been charges or convictions under the provincial offences prosecution procedure.

1730

The whole thrust of the amendments to sections 7 and 8 was to beef up the enforcement mechanism. I understand what Mr. Philip is saying in relation to minimum fines and escalating fines. When I spoke of, I guess, subsection 2 of the amendment, I was really talking in a policy sense rather than in a strictly legal sense. I suggested that courts are not terribly happy with minimum fines or with escalating fines, but there are statutes, as Mr. Philip indicates, to provide for minimum fines and escalating fines, and again, that

is a policy decision that has to be the call of the Legislature, whether the circumstances are special enough to call for that type of provision.

Mr. Philip: Would you agree that this type of case would likely appear before a justice of the peace, who may or may not have legal training, and would you agree that there are great variances in decisions that are made by justices of the peace across the province?

Mr. Ritchie: Variations in sentencing are one of the sort of national issues at the present time both in the criminal law area and with respect to provincial offences, and really it applies at all levels. A person who is on an assault charge may be subject to very different penalties depending on the court, the day, the province and so forth. That is all under study; it is a major issue.

Mr. Philip: I have respect for the court systems and appreciate that it must be an onerous task on some of these JPs who are chosen supposedly because they are generally good people who are supposed to be able to read an act and are functionally literate and therefore can interpret what the statutes do and make decisions. But the major criticism that I have heard from lawyers is that many of these JPs make very inconsistent decisions.

It seems to me that what we have heard in the arguments that we have had before this committee is that the public wants some assurance that if people break the law, they are going to be punished. They do not feel that without the minimum fine there might not be some of the kinds of rather unusual decisions that JPs have made in a variety of instances in this province.

I think it is fair to say that some of the concerns people have had are that they feel perhaps someone violating the law in Etobicoke and coming before that justice of the peace at the Etobicoke courthouse might get a \$50 fine and somebody else, or even the same business operating in Peel, might go to a courthouse out there or somewhere else, or in Peterborough, and end up with a \$50,000 fine.

What we are trying to do is simply to say, "If this is a provincial statute, as the government is claiming it is, then there should at least be some consistency in the way in which we punish people across the province for disobeying that law." You may not get that under the present justice of the peace system of our present court system.

I am not asking you from a policy point of view to agree with that, but will you at least agree—and I think you already have—that there are inconsistencies in the JPs, that that is a major problem and that it would be possible for somebody to get, under this present legislation, a \$50 fine in one municipality and a \$35,000 or \$40,000 fine in another municipality for an identical offence, just coming before a different JP?

Mr. Ritchie: The disparity between sentences, as I have indicated, is a problem at all levels of court, and I am not familiar enough with the subject to say it is more of a problem or less of a problem at the JP level. I do not know that. I just know this to be a national issue of great interest.

But I can deal with your point in a technical way. Suppose, as the amendment suggests, there would be a minimum fine of \$1,000 for a first offence. Do not forget we are talking about an employee in subsection 7(2). This is not the owner of the business. This is an employee and we are talking about a minimum fine of \$1,000. The problem really is that Hudson's Bay or

some other very large retailer that possibly held special sales on a holiday and grossed \$100,000 might come before a justice of the peace or a provincial judge and that judicial officer might fine it \$1,000 on conviction. That is the minimum fine. Now, at the same time, you might have the employee from some small store that netted only \$250, say, on a holiday coming before the court, and again the court has to—and in this case, has to—impose the minimum fine of \$1,000. It cannot go lower.

Again, you get into sentencing disparities and questions as to whether a minimum fine really produces fairness throughout, because the little person maybe does not warrant that minimum fine of \$1,000 and maybe the big person should have a fine way more than \$1,000, and yet you can end up with the type of disparity you are talking about. I am just raising the argument that certain writers and thinkers on this subject have raised in opposition. He is talking about writers who are not in favour of minimum fines and they raise this type of argument to show the problems with that.

Mr. Hampton: I wanted to go over some comments you made earlier. First of all, as proposed by the government, it says in subsection 7(3), "In determining the amount of the fine, the court shall take into consideration any evidence respecting the gross sales in the retail business establishment on the holiday on which the contravention occurred."

You mentioned earlier that in one case that you know of, the Metropolitan Toronto Police, I believe, went after this evidence.

Mr. Ritchie: That is correct.

Mr. Hampton: In your understanding, was that easy evidence to come by or difficult evidence to come by?

Mr. Ritchie: It was easy in the sense that it was there, but it was a very time-consuming and expensive procedure because they had to go and get warrants and they had to raid the premises, so to speak, get the right books, get them to an accountant, have the accountant interpret them and tell them what the sales were on the day in question, and then get the accountant to court with the evidence. It was a fairly time-consuming and expensive procedure, but it is something that can be got. Books were not destroyed or hidden. So it was retrievable.

Mr. Hampton: To put emphasis on your words, it is a fairly expensive and time-consuming procedure for the police.

Mr. Ritchie: That is correct.

Mr. Hampton: Okay. I just want to touch again on the issue of minimum fines, as Mr. Philip has. Let's use Metro Toronto as an example, where a Metropolitan Toronto Police officer or a bylaw enforcement officer investigates a business that is open on Sunday and it is not supposed to be open on Sunday. I would think it would probably go to the Metro Toronto legal department after that and somebody at the Metro Toronto legal department would then appear before a JP and make the case for the conviction and make the case for the fine.

Again, just to touch on what Mr. Philip has touched on—

The Acting Chairman (Ms. Hart): If I could just interrupt here for a second—my apologies, Mr. Hampton—the division bell is going to go in about

five minutes and I do not think the committee has decided whether it wishes to adjourn upon the division bell or to come back after the vote.

1740

Mr. Philip: It would be easier to adjourn.

Mr. Kanter: As a practical matter, we ought to adjourn.

The Acting Chairman: Very well. Sorry, Mr. Hampton.

Mr. Hampton: This legislation is very likely going to be treated the same way that, let us say, the Metropolitan Toronto bylaws or municipal bylaws govern pollution, what you can or cannot dump in your local sewer, or the way municipal bylaws govern licensing, what kind of licence a business would have to have in Metro Toronto to sell certain things, or to be open, or to sell anything. That is very likely how we would prosecute it, would you not agree?

Mr. Ritchie: I guess I am not certain what you are driving at. Technically, they would be prosecuted in the same way, by a Metropolitan Toronto solicitor. We are talking about the breach of a bylaw so it would be Metropolitan Toronto staff giving the evidence that there was the pollution or there was the store opening or whatever. If that is what you are saying, then I agree.

Mr. Hampton: My only point is that I have read some of those bylaws and most of them, to my knowledge, have minimum fines in them. In other words, for the first offence of dumping heavy metals in the sewer, you get a minimum fine and it is spelled out. For the first offence of breaching a licensing bylaw, there is a minimum fine and it is spelled out.

Mr. Ritchie: I am not familiar with municipal bylaws. Municipalities, in particular Metropolitan Toronto, may well favour minimum fines. I was explaining how we got to section 7 as drafted and I guess I was explaining our internal legal bias against the minimum fine and escalating fines.

Mr. Hampton: I am glad to hear your explanation.

Mr. Ritchie: This bias is fairly commonly held by government lawyers but I can appreciate that perhaps some municipalities see great merit in minimum fines. There are lots of examples of minimum fines: if you use a gun in the commission of an offence, the Criminal Code says a minimum of one year. There is a great debate as to whether that is good or bad. Law reformers generally do not like it but a lot of people say, for the reasons that you have indicated, that that sort of thing is a very good prevention.

Mr. Hampton: If I am not mistaken, the Highway Traffic Act sets out minimum penalties and minimum suspension periods.

Mr. Ritchie: Minimum suspension periods, that is correct.

Mr. Hampton: In fact, does the amendment as drafted eliminate all judicial discretion; that is, a minimum fine of \$1,000 for a first offence, \$10,000 for a second offence and \$50,000 for a third and each subsequent offence? Does that remove all judicial discretion?

Mr. Ritchie: The court can fine more than the amount stipulated but it cannot reduce below the amount stipulated.

Mr. Hampton: The court still has some judicial discretion.

Mr. Ritchie: To fine upwards, yes.

Mr. Hampton: If it thinks it is a very serious case for a first offence, it is a blatant first offence.

Mr. Ritchie: That is correct.

Mr. Hampton: Or if it is a particularly blatant second offence, i.e., it follows two weeks after the conviction for the first offence.

Mr. Ritchie: Certainly, the court could fine up to \$50,000.

Mr. Hampton: I want to go back to the comment you made about the difficulty of determining gross sales. I want to ask you about this and maybe you turned your mind over to this when you were drafting it.

I can envision different situations where it would be difficult to find information on gross sales, not only difficult in the accounting sense but difficult perhaps in isolating the accounting records for a particular day of the week and other days; or difficulty, in terms of dealing with large chain stores, of isolating one store from another; or difficulties, for example, if the store simply responds by invoking a possible Charter of Rights argument and says: "If you are looking for specific information, you have to name the information. This legislation does not give you a right to come and snoop through our financial records."

Mr. Ritchie: I agree that in some cases it would probably be difficult to determine gross sales; in some cases.

Mr. Hampton: In which cases can you think of? I have given you three examples.

Mr. Ritchie: Your examples are good ones. I, too, was particularly thinking of instances where the business is separated, perhaps artificially or perhaps genuinely, and operating under different names but under the same roof, that sort of situation. That could make it very difficult for the police to figure out which gross sales belong to which offender.

Mr. Chairman: Are we ready to vote?

Mr. Cureatz: I have a few comments I would like to make.

Mr. Chairman: I am sorry. I did not realize.

Mr. Cureatz: I took with great interest this proposed amendment, and I can only envision that Mr. Philip probably drafted it on one of the many flights that he has taken over the last few months. The more recent one, I guess, was a turmoiled and tragic affair in which he had to jump from Winnipeg to Halifax all within a day. My sympathies went to him because the per diem could not be charged to two different committees. He could charge it to only one.

Of course, upon drafting it, it is now before us and I would be very interested to see what some of my Liberal colleagues would have to say about it. Shirley, who drives regularly up and down the Gardiner Expressway, the Queen Elizabeth Way and probably Highway 403, no doubt has given this very

serious consideration and is very open to the possibility of supporting the proposed amendment.

Of course, I know without a doubt that John is hoping I would be able to continue on so that we could have further discussions and he could call back to his family in Sudbury and confer with them, especially with his lawyer brother, to see what he has to say and whether it is in conjunction with what counsel for the Solicitor General's office has to say.

I would be most remiss if I did not include the former mayor of Uxbridge and soon-to-be former member—within three years—for Durham-York (Mr. Ballinger) —

Mr. Chairman: You have been absent from our committee for so long that I thought I would allow you to be out of order slightly, but you are now totally out of order and I would like to bring you back to the amendment.

Mr. Cureatz: I am, and I am searching for reasons why the Liberals are so adamant in not discussing or bringing some light to this amendment. I can only think in terms of the former mayor of Uxbridge maybe being embarrassed about the legislation. After all, he did a travelling road show through his riding with the Treasurer (Mr. R. F. Nixon) and had, at the imposition of his local chamber of commerce, a full house, for which he bought all the tickets and had to give them out to ensure a crowd was present. Of course, I can understand why the parliamentary assistant to the Solicitor General, the member for St. Andrew-St. Patrick (Mr. Kanter), would not be sympathetic to it because he obviously has lost his focus on the legislation.

Mr. Chairman: He will not know until the vote takes place.

Mr. Cureatz: I can recall seeing his householder. Why he would put on the front page a picture of himself and a very attractive young girl and a dog, I'll never understand. Ron was just grinning at the camera like a Cheshire cat and the girl was off in Never Never Land. You need some public relations help. What I would really like to say—

Mr. Chairman: I just want to clear up something. I was absent for about 10 minutes. Did we move from the amendment that was before us when I left to something different?

Mr. Cureatz: Absolutely not.

Interjections.

Mr. Cureatz: Last but not least, I know from wherever that place is, that she would be delighted—

Mr. Chairman: I hear the division bells. We will adjourn.

The committee adjourned at 5:50 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

MONDAY, NOVEMBER 14, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Hart, Christine E. (York East L) for Mr. McGuinty

Pelissero, Harry E. (Lincoln L) for Mr. Polsinelli

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Hampton

Pollock, Jim (Hastings-Peterborough PC) for Mr. Sterling

Roberts, Marietta L. D. (Elgin L) for Mr. Chiarelli

Clerk: Deller, Deborah

Staff:

Hopkins, Laura A., Legislative Counsel

Witnesses:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, November 14, 1988

The committee met at 3:46 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 6:

Mr. Chairman: I recognize a quorum. I indicate that this is the resumption of the standing committee on administration of justice, which is dealing with Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act. When last we met, we were dealing with a motion by Mr. Philip of the New Democratic Party, and perhaps I will read it again.

Mr. Philip moves that subsections 7(1), (2) and (3) of the act, as set out in section 6 of the bill be struck out and the following substituted therefor:

"(1) Every person carrying on a retail business in a retail establishment who contravenes subsection 2(1) or a regulation made under section 4 is guilty of an offence and on conviction is liable to a fine equal to the gross sales of the retail business establishment on the day on which the contravention occurred.

"(2) Every person employed by or acting on behalf of a person carrying on a retail business in a retail business establishment who contravenes subsection 2(2) or a regulation made under section 4 is guilty of an offence and on conviction is liable to a minimum fine of,

"(a) \$1,000 for a first offence;

"(b) \$10,000 for a second offence; and

"(c) \$50,000 for a third and each subsequent offence."

Mr. Philip: The purpose of this amendment is quite similar to the kinds of bylaws that are passed in different municipalities. Under the Municipal Act, the municipalities have a right to set certain bylaws, and the bylaws will often specify a minimum fine. In removing the discretion from the bill, what you are in fact doing is making sure that there is some consistency in what happens in one municipality as distinct from another municipality.

Often, the purpose of the bylaws in setting out the specific amount is that they know that with municipal government being close to its neighbours, so to speak, it is often difficult for a municipality to go after its neighbours, for politicians in a municipality to say: "Yes, we want to prosecute. We want the lawyers, the solicitors for the municipality, to go after neighbour X or Y or Z, and we want you to throw the book at him," or "We

want you to throw whatever the penalty is." By specifying the amount, you take away a certain amount of discretion. I submit to you that is in the interests of the local politician, who cannot be in any way put upon, if you want, by people who are living in the community to go light on them.

I can give you a fairly good example just recently. At the Canadian Legion, on Friday, I was expressing some concern to our mayor in Etobicoke about the number of illegal signs that were put on public property by certain municipal candidates. I said to him—and I said to the previous mayor the same thing—"Why don't you exercise your full rights under your bylaws and throw the book at these guys?" There is that pressure: "It looks as though it is just sour grapes. I want to get a prosecution against the fellow who is running against me and who is going to be a defeated candidate as of eight o'clock Monday night."

It seems to me that what you have to do often at a municipal level, because there is that kind of political pressure, is to say in no uncertain terms: "There is a certain amount of fine. If you disobey the law, you are going to be fined, and that is it."

By setting \$1,000 for the first offence, it means that a person essentially gets a warning. It climbs to \$10,000 on the second offence and then \$50,000 on the third and subsequent offences. You cannot tell me that if a person is guilty under the first offence, he is not going to be aware of exactly what is going to happen to him under subsequent offences. Therefore, he is under a certain amount of pressure to become a law-abiding citizen.

You cannot argue that somehow this is a criminal matter, that somehow this is similar to something that perhaps should be dealt with at another level when, at the same time, you are passing that authority on to the local municipalities. It seems to me that if they are going to set the rules, then at least if those rules are going to be broken, there should be a certain set of fines. If you do not, then you are going to have a store in one municipality laughing and saying, "We are able to break the law in this municipality because the municipality does not enforce the laws very well, or when it does, then we get a very minimal fine." It is a licence to break the law.

Across the street you have the same merchant, who may have another store, and he says, "I have to obey the law in that municipality because it is tougher and it is determined to get a conviction, and we get tougher sentences in that municipality." What I am saying is that this provides for some uniformity. It makes the enforcement process an awful lot easier. I am sure that my colleague the member for Leeds-Grenville, who comes from the city of Brockville, will have some comments in support of this motion.

Mr. Runciman: Did we have copies of that motion circulated?

Mr. Chairman: We should have.

Mr. Philip: It was circulated on Tuesday.

Mr. Runciman: Perhaps I can borrow your copy, Mr. Philip, and make reference to it.

Mr. Philip: Sure.

Mr. Chairman: Okay. If you do that, I will have the clerk make copies sufficient for all members as soon as she returns.

Mr. Runciman: It is somewhat difficult to respond immediately. I would have liked to have had a little more time to consider the implications of the amendment.

Mr. Chairman: Maybe I can find out if there are any other members who wish to speak to it. If there are, then we will give you that opportunity. Are there any other members who wish to speak? Mr. Kanter.

Mr. Kanter: I would prefer to hear Mr. Runciman's comments and respond.

Mr. Chairman: In fairness, since Mr. Runciman feels he wishes some time, I will give you an opportunity to speak, Mr. Runciman an opportunity, and as you know, all members have an opportunity to speak as often as they wish, so you can speak again if you want.

Mr. Kanter: I will try to fill in a little time while Mr. Runciman is preparing his comments.

I think Mr. Philip has touched on an important part of this bill, which is enforceability. That is certainly one of the concerns the government has with the current bill, and indeed, we have introduced a host of provisions in section 7 and section 8 to increase the enforceability of this legislation.

We have increased the fines substantially under subsection 7(1). In subsection 7(3), we have indicated that the court shall take into consideration any evidence respecting gross sales. We have said that signs or advertisements may be admissible as evidence. We have introduced the concept of injunctive relief, whereby an application may be made to a court to shut some place down rather than allowing the process to drag through the courts. I think we have taken a number of steps to increase very substantially the enforceability of this legislation.

On Tuesday, the last time this group met, we did hear some comments by Mr. Ritchie, our legal counsel, formerly with the ministry, who is very familiar with this bill. I think it is fair to say his concerns could be summarized by suggesting that the structure set out by Mr. Philip could, on some occasions—not all occasions, but on some occasions—be too tough or not tough enough on some offenders.

I believe Mr. Ritchie gave the illustration of a small entity, and I guess we are actually referring here to a person employed by, an employee, a person without substantial means, who might perhaps inadvertently commit an offence who would be subject to an automatic fine of \$1,000 for a first offence, which could, in some circumstances, be excessive. It is an absolute minimum fine, as I read the amendment.

On the other hand, there might be situations where for an employee of a corporation that was persisting in this kind of action, \$1,000 for a first offence might not be sufficient; might not be adequate.

In the view of Mr. Ritchie, he suggested that this was limiting the discretion of the court. "Binding the hands of the judiciary," I believe, were his exact words. I think that is a concern that I have, quite frankly, about the motion that Mr. Philip has moved.

With respect to today's comments by Mr. Philip, he refers to a municipal bylaw. I would simply point out to Mr. Philip and other members of the committee that a contravention of section 2, referred to in subsection 7(1) of the act, is a contravention of a provincial law. It is not a municipal bylaw, it is a provincial law, and we would expect, I think, from most of the evidence we have heard before this committee, that in most cases, municipalities are going to stick with the provincial law. I certainly think that the comments of Mr. Ritchie were particularly apropos in those cases.

It may be, in some cases, that we have a municipal bylaw under section 4 that derogates from that provincial law. In that case, we are quite prepared—indeed, we have introduced an amendment which I believe all members have, and I know they have had this for some time and it may not be close to the top of their pile, but we are proposing to introduce an amendment which will follow Mr. Philip's so that municipal bylaws will be subject to the same fine structure. They will also be subject to the maximum \$50,000 fine.

Concern was expressed by the Coalition Against Open Sunday Shopping and by some other deputants who came before us that a municipality could gut the act by setting up a nominal fine structure. I think I heard a \$1 fine or \$2 fine or something like that.

That is not our intention. Our intention is to make the provincial closing law enforceable and equally to make municipal regulations that vary that provincial law enforceable.

1600

That is why we will be moving an amendment to put the municipal fine structure in total consistency with the provincial fine structure. We feel that goes a tremendous distance towards increasing enforceability of the act. Indeed, I have some concerns that in some cases a \$1,000 compulsory first offence fine on an employee might lead to a judge, a justice of the peace, or whoever might be hearing this matter not registering a conviction when one ought to be registered.

I appreciate the concern of Mr. Philip for enforceability of the act. Indeed, that is one of the driving forces behind our entire series of amendments. I think that our amendments under section 7 and section 8 go a long way to addressing those concerns. In addition, we will be offering a further amendment specifically to subsection 7(3) which puts the punishment for breach of municipal bylaws into accord with punishment for breaches of the provincial law. Therefore, I would suggest that members not support Mr. Philip's amendment but rather the government amendment to follow, specifically with respect to municipal bylaws or the breach of municipal bylaws.

Mr. Chairman: Is a copy of that before us?

Mr. Kanter: It should be. I certainly have a copy here. If it is not—I thought it was submitted before the beginning of clause-by-clause, but I know that was some time ago— I will certainly be glad to make another copy available.

Mr. Chairman: Maybe you could make that available to the clerk and we will have her make copies of it.

I am going to back to Mr. Runciman before you—

Mr. Philip: Maybe I could just respond to a couple of Mr. Kanter's concerns.

Mr. Chairman: If Mr. Runciman is prepared to allow you to do that; we did move from him—

Mr. Runciman: No problem.

Mr. Philip: I find it blatantly absurd that someone speaking on behalf of the government, the same government that has refused to move forward with the report of the standing committee on regulations and private bills dealing with the problems that businessmen are being faced with by having regulations that they do not know even exist and being therefore guilty in violation of those regulations, that government that would not proceed with that report where there are some obscure regulations that some may miss accidentally as a business person, would then suddenly somehow argue that some poor business person is going to be so ignorant or living on the moon that they would not know that there were bylaws or indeed that there was an act regulating store hours.

One has to ask, where has he been during these committee hearings? It has been on the front page of newspapers across the province. When this bill is passed, it will certainly be front page of all of the newspapers across the province. It will be explained and debated again, in detail, on the editorial pages of those. It will be covered in all of the trade journals. The Coalition Against Open Sunday Shopping and the hundreds of thousands of people they represent will be getting their information about the bill in its completed form, if it is passed, out to their members, a great majority of whom are shopkeepers and store owners, as will the other side, the Bays and the Cadillac Fairviews of this world who support the government on this bill.

To suggest that somehow, after all of that, after all the debate we are having here, after all the hearings we have had with a select committee, with the Conservative task force, with this committee going around and with the final disposition of this bill in whatever form, someone suddenly would not know what the law was on Sunday shopping after it is eventually dealt with, I find to be blatantly absurd.

Where do you think the merchants, the grocery store owners and the Canadian Tire store owners are in this province that they would not know something which they have been so deeply concerned about for so long, and indeed in the case of most of them have been opposed to? To suggest then that some poor shopping mall owner or some grocery store owner would be taken by surprise and commit an offence under this is such a stretch of the imagination that I do not believe Mr. Kanter really believes his argument. One would have to be smoking something or other to come up with such a fantasy.

Mr. Chairman: It is not a smoking committee, Mr. Philip. I want you to realize that.

Mr. Philip: Or sniffing something or other, I guess.

Mr. Chairman: We may make it nonsniffing too.

Mr. Philip: That would be a good idea, considering the badges that many of us are wearing today.

The other argument that he makes is that Mr. Ritchie has said that

somehow it will eliminate judicial discretion, and of course, that is true, but what Mr. Ritchie also said was that it is quite common for municipalities to pass these kinds of bylaws with specific offences in them.

What this bill does under this section now is that it allows complete discretion. I say that if Mr. Kanter and if the government members had been listening to the people who came before us, they said "Look, we do not want open discretion, we want specific fines so that people know what the rules are and that they can, in turn, know that if they commit an offence, they are going to be punished for it and exactly what the punishment is."

To say that somehow we should allow judicial discretion when the public has in fact not asked for it, when it has said, "We want specific fines, we want it to be spelled out," is simply going against the public opinion through the briefs that we have received. I say to members of the committee that Mr. Kanter is simply not listening to the public and is certainly not relying on his own municipal experience or he would come to a different conclusion.

Mr. Ballinger: That is certainly a matter of opinion.

Mr. Chairman: Mr. Runciman, you are next.

Mr. Philip: It is a matter of opinion; the opinion of the public that was—

Mr. Chairman: Order.

Mr. Ballinger: You are—

Mr. Philip: Oh, but it is not my opinion. It is the opinion of the public that appeared before this committee.

Mr. Chairman: Mr. Philip and Mr. Ballinger, I would like you to address—

Mr. Philip: Brief after brief, Mr. Ballinger, came before this committee and asked for specific fines.

Mr. Chairman: Mr. Philip—

Mr. Ballinger: Relax, you are getting high blood pressure.

Mr. Philip: I do not have high blood pressure.

Mr. Chairman: Mr. Philip and Mr. Ballinger equally, through the chair.

Mr. Ballinger: I apologize, Mr. Chairman; I forgot we were on television.

Mr. Chairman: Whether we are on television or whether we are meeting nontelevision, we should not be doing this.

Mr. Ballinger: Mr. Philip conducts himself better live.

Mr. Runciman: I am going to support Mr. Philip's motion. Having had a great deal of time to consider it during Mr. Philip's point of view on hearing Mr. Kanter's, in taking a look at the bill, it seems to me that Mr.

Kanter's argument is certainly not very strong in terms of addressing the concerns Mr. Philip has outlined.

He talks about limiting the discretion of the court, and I guess I am not terribly offended by that concept of limiting the discretion. Perhaps that is something we should be looking at on more occasions, rather than simply this piece of legislation. The courts have too much discretion in some of the things they do or do not do in this province.

Mr. Kanter raised the possibility of a judge, because of a minimum fine, perhaps not registering a conviction. I have a great deal of difficulty with that concept, that proposal. If indeed someone is in clear violation of a law of the land and a judge, for some personal reasons, has difficulty with the penalty that he is required to mete out and for that reason finds someone innocent when they are clearly guilty, I just have difficulty accepting that as a justifiable argument for not having some sort of a minimum penalty built into the legislation.

I think that Mr. Philip's amendment certainly touches on many of the concerns. Mr. Kanter went on at length about the government amendment which he thinks will address some of the same concerns, but I do not see, reading the amendment, which is attached—I took a look at it initially. I thought he must be talking about something else. Although it is included in our package, I do not see where it is that extensive other than, I guess, the implication being that rather than "may" provide fines, you have changed the wording to say "shall" provide. It still leaves you a great deal of flexibility. We talked about the possibility of a \$1 fine. The wording of the government amendment certainly does not eliminate that sort of a possibility.

In Mr. Philip's amendment he is talking about being very specific with respect to penalties that deal with the person or persons carrying on a retail business. The fines equal the gross sales, etc., on the day on which the contravention occurred. You can compare that with the government proposal, Bill 113, where it requires the courts only to take into consideration any evidence respecting gross sales.

I think these kinds of penalties which are much more specific and clear to those who may be contemplating violation of the legislation are the way to go. If the government's intent is really not to open up Sunday shopping to anyone who wants to do so or not to provide so much latitude in the legislation that you are going to see things occurring that most of us do not want to see occurring, I think we have to be much more inflexible in terms of the way we are going to spell out the kinds of penalties that go with violation of the act.

I think it is a good amendment and I have not heard the government representative really provide what I think is an acceptable alternative. In the face of no such alternative, I will be supporting Mr. Philip's amendment.

Ms. Collins: In response to Mr. Philip's response to Mr. Kanter, or should I say the outburst from Mr. Philip, he talked and talked about the owner of the establishment and the fines for the owner of the establishment but neglected to point out that in section 2 of the amendment every person employed by or acting on behalf of a person carrying on a retail business would be liable to a minimum fine of \$1,000 for a first offence.

I think of all of the part-time students in this province and single mothers who are perhaps called in to work on a Sunday not knowing that the

store is open illegally. Some of these people would not make \$1,000 in a year working part-time, yet they would be liable to this \$1,000 minimum fine for a first offence. I am quite surprised that the New Democratic Party would even bring forward such an amendment. I will not be supporting it.

Mr. Philip: If Ms. Collins is concerned about that, I would accept an amendment to this section that would eliminate the employees from any kind of fine and in fact put the fine on the individual owner of the store. If she wants to move that amendment, I would be perfectly happy to deal with that.

Mr. Chairman: I am not certain she was speaking in terms of that.

Ms. Collins: This is an added concern to those that have been outlined on behalf of the government by Mr. Kanter.

Mr. Philip: The present act allows for a fine of up to \$50,000. Maybe she feels comfortable with having some poor employee that she is talking about fined \$50,000. All we are saying is that if you commit an offence, at least there should be a minimum fine. If she is concerned about the employees, then she would be even more concerned about that same poor employee getting the possibility of a \$50,000 fine. I do not hear her talk about that, because that is the government's position.

Ms. Collins: I do not think there are many judges in this province who would fine a part-time student or a single mother who was working on a Sunday, perhaps unknowingly, in a store that was illegally open \$50,000. Under this amendment, the judge has no choice but to fine either of those people a \$1,000 minimum fine.

Mr. Philip: With respect, if Ms. Collins feels that no judge would fine a person who accidentally was the victim of her employer asking her to work on Sunday rather than the employer, then I am sure the judge would find equal sympathy for the employee.

Ms. Collins: Why do you not read your amendment?

Mr. Philip: Why do you not read your act? Maybe if you read your act and saw what that does—

Mr. Chairman: Just a second.

Mr. Ballinger: I do not think there is any need for Mr. Philip and Ms. Collins to be yelling at each other.

Mr. Chairman: We do not need it from anyone.

Mr. Philip: It is the Liberals who constantly interject with these snide comments.

Mr. Ballinger: I just heard you interject to Ms. Collins.

Mr. Philip: I am sorry. On a point of order, Mr. Chairman: It was Ms. Collins who said that I did not understand my amendment. I am suggesting that she does not understand her act. I was trying to explain that act to her. I am sorry her mind is so closed that she does not want to see that.

Mr. Chairman: Now, now, that is not a point of order. In fact, it might evoke a point of privilege. In any event, we have had pretty fair

discussion on this, and I think members are probably ready to vote. Do you wish a recorded vote?

Mr. Philip: I have a question to Mr. Kanter first. I am wondering if he can give one example or one scenario that he could possibly envisage where, after all the debate that we have had on this act, after all of the amount of press coverage that has been given, once the finished product is done, any one person who is involved in the retail industry in this province would not be aware of when he or she may open the store and when he or she may not open the store and will accidentally be a victim then of this \$1,000 fine.

Mr. Kanter: Mr. Philip referred in earlier debates on motions to the desirability, in his view, of advertising in various ethnic media. I think it is fair to say there is a lot of diversity in the province. We have talked about that; we have seen evidence of that. I do not think just the fact that because this committee has been aware, perhaps all too aware, of this particular issue, it means that the general public or people who are involved in this act might all be as knowledgeable as Mr. Philip would like them to be.

I think Ms. Collins had a very appropriate comment as to the need for judicial discretion in assessing fines, particularly for employees. I think that was a very appropriate, sensitive comment to the variety of people, not all perhaps as knowledgeable or sophisticated in these matters as Mr. Philip or the rest of us. I think we should not assume that every employee or potential retail employee in the province is as knowledgeable as we might be as to all the provisions of this act.

Mr. Philip: Maybe I can ask Mr. Kanter another question that arises from his comment. Do I take it then that his position is that because the Liberal members on this committee have seen fit to defeat the amendment posed by the opposition that would have ensured advertising in the various ethnic language newspapers so that they were aware when changes were being made, that somehow because that was in fact defeated by the government majority on the committee, members of those communities might not be aware and therefore might accidentally get caught in this act? Therefore, we should not pose a minimum fine because, through the negligence or the commission of this government, which did not want to advertise, there might be a few people accidentally caught under the \$1,000 fine. Is that his position?

Mr. Ballinger: Such outlandish statements.

Mr. Chairman: Just a second.

You are out of order, and I think you know you are. Under the rules, we are now discussing something that was voted on in this committee, albeit not in as public a forum, and has been defeated. We are not about to resurrect it unless you are moving some form of an amendment under the rules to resurrect it. I am going to rule you are out of order. You know what your remedies are if you disagree.

Mr. Philip: I challenge you on that, Mr. Chairman.

Mr. Chairman: There has been a challenge to the chair in terms of my ruling. Do you wish an opportunity to muster further voters, or are we ready to vote at the moment on upholding the chairman's ruling?

Mr. Philip: I would like an opportunity to have a formal vote on that, because Mr. Kanter was the one who brought up the issue, not me.

Mr. Chairman: It is nondebatable. I have ruled you out of order. We are now voting on the question of upholding the chair or defeating the chair's ruling.

Mr. Philip: I ask for a 20-minute recess.

Mr. Chairman: All right. Perhaps we can have a definitive time. It will be then till 4:40.

The committee recessed at 4:20 p.m.

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Mr. Chairman: We have a quorum. We are now voting as to whether or not we are going to uphold the chair's ruling as to the question of whether or not Mr. Philip's questions were out of order. Those in favour of upholding the chair? Those opposed?

Agreed to.

Mr. Chairman: All right, Mr. Philip, you may continue.

Mr. Philip: On the amendment, if I may summarize, and I am sure my colleague Mr. Farnan will want to say a few words as well, the essence of Mr. Kanter's last summary—or attack, if you want, if I might be so bold as to use that word, because it was perhaps less than an attack—is that somehow some innocent person might be found guilty, an innocent person in the sense of a person who unknowingly actually kept a store open on Sunday when he was not supposed to. To bolster his argument, he stated that somehow someone might not be able to speak English or French and therefore might not be aware that this legislation had gone through and then might accidentally keep his store open in an unknowledgeable way and therefore end up with a \$1,000 fine.

Notwithstanding the fact that a way was provided by the opposition, which was defeated by this—

Mr. Chairman: Mr. Philip, I am going back. That is a ruling that was made by the chair. It was upheld and you are back on the same issue all over again, and I am going to rule you out of order a second time.

Mr. Philip: Is your ruling then that every time that—

Mr. Chairman: My ruling is that when you reflect on a vote and understanding order 19—and I can get the rules—unless you are prepared to move an amendment that—

Mr. Farnan: Subsection 19(d).

Mr. Chairman: Thank you very much; Mr. Farnan is helping us out here.

Mr. Philip, you are back in the same area, and there has been a ruling on it. The ruling was upheld by the majority of the committee, and I am going to rule you out of order again.

Mr. Philip: If I may just understand your ruling though; your ruling is that no member may refer to any previous action by the government in order to

Mr. Chairman: No.

Mr. Philip: --make his arguments against or for a particular amendment?

Mr. Chairman: I am ruling that if you start discussing an item that was dealt with by the vote of this committee, it is out of order. It is contrary to the standing orders, rule 19(3), and that was exactly what we just dealt with and that was why we had the 20-minute recess to vote on it and we voted on it.

Mr. Philip: If I just might get a clarification because I do not want to be in violation of your ruling: Are you suggesting that, since the government argues that this is a bill that has a certain integrity to it, that it holds together so that each part balances each other part, members, including the government members, of course, may not refer to earlier sections that have been dealt with in debating a particular section? If that is your ruling, then it becomes impossible to deal with any amendments to this bill after a certain point in time, because they are all interrelated in some way to previous amendments.

Mr. Chairman: As I understand the rationale of the rules, if a vote is taken on a particular item, that item is finished. We do not go back to it. We do not question it, unless, as the rules say, you are speaking of presenting an amendment; that is, you are going to amend whatever that section was that we defeated. If you wish to do that, you are perfectly within your limits to do that, but you are now getting into the question all over again of an item that we voted on.

If the rules were not there for that, common sense would lead one to believe that would be the case, because if we did not do that, what in fact we would be doing would be going around in circles. I am sure you do not want to go around in circles, so do you wish to continue with Mr. Kanter--

Mr. Philip: I certainly would not want to go around in circles, but I do not believe that you would want to tie up the committee in such a rigid straitjacket that it cannot deal with a particular section of the bill.

Mr. Chairman: I am not going to hear any more debate on it, Mr. Philip. I am not trying to tie up the committee. What I am trying to do is to conduct this hearing according to the rules that the members of the Legislature have agreed upon. Until they are changed, that is the way this meeting will be conducted. I would like to proceed with Mr. Kanter, but if you go into that area, I will rule you out of order again.

Mr. Philip: So, Mr. Chairman, in your opinion, it is perfectly okay for the government members to--

Mr. Chairman: It is not debatable, Mr. Philip.

Mr. Philip: How do you know what is debatable when you have not heard my argument yet?

Mr. Chairman: Because an argument means you are trying to debate the ruling that has already been made.

Mr. Philip: No, I am trying to get a ruling from you that has some consistency.

Mr. Chairman: Do you have further questions of Mr. Kanter?

Mr. Philip: Yes, I have some further questions of Mr. Kanter.

Mr. Chairman: All right, fine, go ahead. Where is Mr. Kanter? Mr. Kanter, would you take your chair?

Mr. Kanter: Sorry.

Mr. Chairman: Go ahead, Mr. Philip.

Mr. Philip: My question to Mr. Kanter is that, since he seems to think that somebody who does not speak English might accidentally not know he was breaking the law when he kept his store open on Sunday—I believe that was his argument—can he suggest any possible remedy to that problem that could be incorporated in this bill that would deal with that and, therefore, deal with the problem of the minimum fine, which people have asked for when they appeared before this committee?

Mr. Chairman: You are asking for a reply from Mr. Kanter. Mr. Kanter, do you want to respond?

Mr. Kanter: As I indicated, I was in part echoing some of the comments of Mr. Ritchie, who pointed out that minimum fines could be a problem. There could be, in his words, some hardship cases, small stores run by an individual or an individual's spouse, and the type of employee Ms. Collins referred to, a student. It is certainly not limited to people who might not speak English as their first language. Those are my comments.

Mr. Philip: Now that Mr. Kanter has changed his position, maybe I can ask him another question. As a former municipal politician, can you tell us whether it has been your experience that minimum fines are quite a normal procedure for municipalities under the Municipal Act? Do you find that there are large numbers of people out there who are suddenly being brought into the courts and being unfairly fined because they did not know they were breaking those particular bylaws, and can you give an example of one of those bylaws?

Mr. Chairman: I would think that is a question where maybe we could ask Mr. Spring to come forward.

Mr. Philip: No, my question is to Mr. Kanter. Mr. Kanter is the person who is here on behalf of the Solicitor General (Mrs. Smith). I am asking him, as a former municipal politician, since the argument is that someone is going to somehow be victimized because he would not know that he was not entitled to keep his store open on Sunday and suddenly opens it and is going to be subjected to a fine of \$1,000 under my amendment, a minimum fine on first offence, can he give us any example from his municipal experience where this might be happening on a recurring basis? It is basically the same principle that what you are doing is you are saying, "If you commit an offence, we do not want discretion; we want at least a minimum fine to teach you not to commit the offence again." That is commonly done by municipalities over and over again.

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I am asking, if this is so wrong under this legislation, can he give us an example under the municipal bylaws, since he does have this municipal experience, where people, innocent victims, have been victimized and forced to pay a fine through committing an offence out of lack of knowledge?

Mr. Kanter: I would like to answer that question in two ways. First, as I tried to point out, certainly the experience of this committee is that in most cases we will have a provincial law. I suggest from my rather brief experience with provincial legislation—Mr. Philip's is, of course, much greater—that it is quite uncommon to have a minimum fine in provincial legislation; not perhaps unprecedented but quite uncommon.

Perhaps Mr. Philip might point to examples of provincial legislation that have a minimum fine. I am not familiar with any, except perhaps in the cases of taxing legislation.

Second, with respect to municipal bylaws, many municipal bylaws, of course, are of the land use type, and I am not familiar with any minimum fine for being in violation of those. There are cases of requirements of licences, demolition control and that kind of thing.

I do recall one case in Toronto where someone was required to tear down a house that been completed or partially completed in contravention of local building standards. I think he had built it without a building permit. That was a very severe penalty on the individual involved. It was by the courts using discretion. They felt this particular individual had flouted the city bylaw quite flagrantly over a period of a years. I think it is an example of the situation where discretion could be used on an individual who had a very bad record. A penalty that was very severe with respect to that individual was meted out. In many other cases, it would not have made any sense to require a person to tear down a house that he had built simply because he had not obtained a building permit, perhaps out of lack of knowledge or familiarity with the system.

Quite frankly, the only municipal bylaw I can recall in my years at city hall that did have a minimum fine is the stoop and scoop bylaw in the city of Toronto. That is one that does have a minimum fine, and that was enacted after lengthy and vigorous discussion.

In general answer to his question with respect to provincial legislation, I would say it is quite uncommon. With respect to municipal bylaws, while it may not be as uncommon, it is certainly not inevitable or invariable that there are minimum fines with respect to municipal bylaws.

Mr. Chairman: As chairman, I want to clarify this, because I think what is going on here is not going to get the answer to your question.

Mr. Spring, I would like you to come forward. I wonder if you could indicate from your knowledge of the statutes—I think that was the nature of Mr. Philip's question, and it is a fair question—as to whether or not there are statutes that provide for a minimum fine.

Mr. Spring: Yes, there are some.

Mr. Philip: The Highway Traffic Act.

Mr. Spring: The Highway Traffic Act general provision, where there are not specific penalties for specific offences, provides for a minimum fine of \$40 and a maximum fine of \$200, I believe.

[am hard put to suggest to you other statutes that may or may not contain minimum-fine provisions. There is one under the Compulsory Automobile Insurance Act. To drive without insurance has, I believe, a minimum penalty of \$500.

Mr. Philip: Are there not also minimum fines under the Ontario Highway Transport Board Act with regard to certain safety provisions?

Mr. Spring: You may have the advantage of me there, Mr. Philip. I cannot answer your question.

Mr. Philip: Are there not also minimum penalties—I would use that word rather than "fines"—with regard to drunk driving and other sorts of offences under the Highway Traffic Act?

Mr. Spring: Drunk driving is under the Criminal Code.

Mr. Philip: Under the Criminal Code.

Mr. Spring: Yes, there are.

Mr. Chairman: Could I just interject? Is it normal that a minimum fine is applicable in cases where there is a strict liability offence as opposed to one that requires some degree of guilty knowledge?

Mr. Spring: Is it normal that a minimum fine is applicable to strict liability offences?

Mr. Chairman: As opposed to ones that require some form of mens rea?

Ms. Hart: Mr. Chairman, I would like to add something to that. Mr. Spring is not familiar with it. I had some experience with environmental statutes. Some of the offences under the environmental statutes are strict liability offences and they do not have minimum fines.

Mr. Chairman: Okay.

Mr. Philip: Would you agree, for example, that under the Truck Transportation Act a person for overloading a truck—it may not be to his knowledge, since he is not the person responsible for loading—might in fact be guilty and have to pay a specific fine?

Mr. Spring: There may be a specific fine assessed. It would be set by the chief provincial judge, I believe. Similarly with speeding, there is a range and the chief provincial judge, the chief judge of the Provincial Court criminal division, sets the actual fine which can be meted out and which can be written on the ticket—on the payout, if you will.

Mr. Philip: Would you agree that in a case like that, a defence would not be acceptable that the person did not know that his speedometer was not working properly?

Mr. Spring: There are all sorts of cases on that, Mr. Philip. I guess I cannot recall one that succeeded.

Mr. Philip: Therefore, a person who, without knowledge, then, was speeding would still have to pay the minimum fine?

Mr. Spring: He would have to pay the fine that was imposed by the chief judge.

Mr. Philip: That is right, yes.

Mr. Spring: That is not a minimum fine.

Mr. Chairman: Thank you, Mr. Spring. Do you have any further questions of Mr. Spring or is that the end?

Mr. Philip: I just wanted to clarify what Mr. Ritchie said. Have you read the Hansard as to—

Mr. Spring: No, I have not.

Mr. Philip: As I recall, Mr. Ritchie certainly said that it was quite common for municipalities to have bylaws with specific fines spelled out.

Mr. Spring: I cannot quarrel with that. I do not know.

Mr. Philip: Would you agree that would be the case?

Mr. Spring: I do not know. I bow to Mr. Ritchie's knowledge in the area.

Mr. Chairman: Okay? Just one final one, and just by way of clarification, what is the maximum fine that could be imposed by a provincial act as a minimum? Is \$50,000 the range?

Mr. Spring: I am not aware that there is any statute imposing a particular maximum that can be set out in a provincial statute.

Mr. Chairman: At one time, I thought there was a maximum that the province had jurisdiction to impose in terms of a fine.

Ms. Hart: Mr. Chairman, you may be thinking of the Summary Convictions Act, which did have a range of fines with a top level fine. I do not know what it is these days, but that would not limit the fine that the province could impose. It just, by statute, limited the fine that could be imposed on offences that were proceeded against by way of summary convictions.

Mr. Chairman: These are by way of summary convictions.

Ms. Hart: Some of them, I do not know.

Mr. Spring: All of these offences are prosecuted by way of the Provincial Offences Act, which is a self-contained code of procedure that does not address issues of summary conviction versus whatever other there might be, prosecution on indictment.

Mr. Philip: One last question, or at least one question. I will not say it is the last question. I will hear the answer first.

Would you agree that under this section 7 that it would be possible for a person to flout the law, keep his store open when he was not allowed to, and end up with a very nominal fine, say \$50, \$100, for keeping that store open?

Mr. Spring: Yes.

Mr. Philip: Then in your opinion—and I am quoting from the similar concerns of the witnesses that we have had across this province during the eight weeks or 10 weeks of hearings—would it be possible for a small businessman or a merchant, say, a medium-sized merchant, to open in one municipality and under this act, the way it is written now, get a fine of \$50 while the fellow across the street in another municipality in a different court would end up getting a \$25,000 fine for the same offence?

1700

Mr. Spring: I concede the possibility. The discretion is in the court. It would depend, of course, on the evidence before the court.

Mr. Philip: What we have then is a possibility that one judge might levy a fine of \$25 or \$50, and another judge in a municipality for the same offence might levy on that poor individual Ms. Collins is so concerned about a fine of \$25,000.

Mr. Spring: Theoretically, it is possible, but there is some comity among judges and among judgements at whatever level, I believe, Mr. Philip.

Mr. Philip: But would you not agree that in this case what you are really appearing before is probably a justice of the peace who is a well-meaning individual, not trained in the law in many cases, with no legal background, who spends most of his time dealing with speeding tickets and people who are parked in fire zones and other sorts of people who have hooked up a stove in their basement when they are not supposed to have one there because they have set up an illegal apartment, that kind of offence? Suddenly they are faced with a provincial statute this government says it takes seriously. It actually says this is a tougher bill than before, yet it ends up that one fellow gets fined \$25,000 and someone else would get fined \$50 under this act.

Mr. Spring: As I say, I concede the legal possibility. I believe in the principle of judicial comity and I think it unlikely.

Mr. Philip: What I am saying, though, is that they are not appearing before great, high-level judges. They are appearing before justices of the peace who are used to dealing with whether John Brown actually parked in someone else's parking space most of the time. You are not talking about a fairly high-level justice when you are dealing with this kind of offence. Is that not true?

Mr. Spring: They are the lower rungs of the judicial ladder, that is true.

Mr. Philip: Would you agree that the inconsistency in those lower rungs of the judicial ladder is of such concern that the Attorney General's office is now having its own study into that very matter?

Mr. Chairman: I would not want you to even answer that, Mr. Spring. It may be going on, and if it is going on, fine, but I think we are getting far afield here. Up to that point, I think you were certainly totally relevant-

Mr. Philip: Mr. Chairman, what I am trying to point out is that the people who are going to be making the decisions in these matters, which might result in somebody paying a \$25,000 fine while another person pays a \$50 fine for the same offence, are the same people the Attorney General (Mr. Scott) and indeed this Legislature are concerned enough about that the Attorney General has presently got a study on concerning the inconsistencies in a lot of those decisions by those people.

Mr. Chairman: He may well have, but we are not going to get into that area. That is outside of this. I appreciate what you are saying. I think members of the committee do, too.

Mr. Philip: My argument to the Liberal members of this committee is that we know there is a problem at the level of court these matters are going to. We know there is such a problem that even the Attorney General has recognized the problem and has a study into what is going on at that level of the justice system.

What you want is to give these people the discretion to either give a fine of \$5, \$50 or \$25,000 for the same offence, and I say to you that if you want some kind of consistency in the system, if you want to send out a clear message to the offenders, if you are really serious about introducing store legislation, as you say you are, then you would at least want to set out a minimum set of standards whereby people would know that if they contravene the law, they are going to be punished.

Mr. Chairman: Thank you, Mr. Philip. Are we ready to vote?

Mr. Runciman: Mr. Chairman, it has been suggested, and I think it is probably appropriate, that we request time just to round up our numbers again.

Mr. Chairman: All right. We will put the question that the vote be taken first, and if that is the case —

Mr. Ballinger: You fellows cannot be serious.

Mr. Chairman: The question is going to be taken then. The opposition has asked for 20 minutes, which it is entitled to under the rules, to garner support. We stand in recess until 5:25 for a vote.

The committee recessed at 5:05 p.m.

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Mr. Chairman: I recognize a quorum. We are now ready to vote on Mr. Philip's amendment.

Mr. Philip: I intended to challenge the chair that it is 5:25 but I will not.

Mr. Chairman: Those in favour of Mr. Philip's amendment please signify. Is he able to vote—Mr. Farnan?

Interjection: He is a member of the committee.

Clerk of the Committee: Yes.

Mr. Philip: Mr. Chairman, I wish you would know who your members are.

Mr. Chairman: I was not sure.

Mr. Philip: The clerk normally puts a list in front of you.

Mr. Chairman: No, no.

Mr. Philip: That happens in all committees, and I know from personal experience. I can tell you on any one day that Mr. Ballinger is a member of my committee.

Mr. Chairman: If you are nice I will not tell you what my—

Clerk of the Committee: Mr. Farnan is a regular member.

Mr. Farnan: I would prefer if you said, "Is Mr. Farnan allowed to vote?" rather than, "Is he allowed to vote?" It has a certain formality to it that I have become accustomed to with your direction from the chair.

Mr. Chairman: All right, thank you. Those in favour of Mr. Philips's amendment? Those opposed? The amendment is defeated.

We will move on. The next amendment we have—

Mr. Philip: I have another amendment that springs from this.

Mr. Chairman: I am sorry, Mr. Runciman.

Mr. Runciman: You could not wait an extra minute?

Mr. Chairman: Actually, according to my watch—

Mr. Farnan: Let the record show that Mr. Philip did indeed request that we wait just a moment for your arrival, but the chair overruled.

Mr. Chairman: No, I did not.

Mr. Ballinger: Let the record show that you just made that up.

Mr. Chairman: The next amendment is by the New Democratic Party, Mr. Philip's amendment.

Mr. Philip: It will be circulated right now.

Mr. Chairman: Mr. Philip moves that subsection 7(2) of the act as set out in section 6 of the bill be struck out and the following substituted therefor:

(2) "A bylaw"—just a second.

Mr. Philip: The one that is hand printed is the one that you move.

Mr. Chairman: Just a second. I realize that. Why can we not vote on subsection 7(1)? That comes before this.

Clerk of the Committee: You can deal with the whole section, finish all the amendments. That is the way we have been proceeding up to now.

Mr. Chairman: Why can we not deal with subsection 7(1)? Apparently there are no amendments to subsection 7(1). I entertain a motion to vote on subsection 7(1).

1730

Interjections.

Mr. Chairman: The motion has been made to vote on 7(1).

Mr. Runciman: Could I ask a question before we do that?

Mr. Chairman: Yes.

Mr. Runciman: I would like to hear Mr. Kanter's comments with respect to the maximum fine and how the government arrived at that figure. Was this looked at in light of other legislation, or just what was the rationale?

Mr. Kanter: To increase it very substantially from the former \$10,000 figure is really the rationale. For further information in terms of comparisons with other statutes, I do not know whether Mr. Spring has any information on that or not. I see him shaking his head no, but you can call on him to—

Mr. Runciman: So this was just pulled out of the air as, hopefully, a rather frightening figure to anyone who might be contemplating a violation.

Mr. Kanter: I think it is fair to say that it was certainly intended to—it is five times larger than the current figure. In conjunction with the other measures that I outlined previously, and I will not take the time of the committee to go through them again, it was intended to make the act much more enforceable.

Mr. Runciman: Pardon me, could you repeat that?

Mr. Kanter: Yes. It was intended to make the act much more enforceable with respect to those who were in breach or violation of the Retail Business Holidays Act. There has been, I think it is commonly agreed, a problem with the enforceability of this legislation and our intent is to make it much more enforceable.

Mr. Runciman: If I could pursue that one step farther, in fact the \$10,000 was obviously not a significant enough deterrent in the past; that is what you are suggesting. This is obviously not some sort of a scientific effort to determine what indeed would be a deterrent and what would not be a deterrent. I guess I would like to know a little bit more about why you feel this would be a deterrent, whereas it is simply an additional—when we are talking about some rather large operations that could make, I would suspect, significant sums of money by being open on any given day.

Mr. Kanter: I would like to answer that question by saying that this section, I think, should be viewed together with the other provisions of section 7 and section 8 which I think I did refer to previously. The court shall take into consideration any evidence respecting the gross sales of the retail business establishment. There is the possibility of an application for an injunction under section 8, and it is also my understanding, and you may wish to confirm this with legislative counsel, that every time section 2 is contravened, or a regulation under section 4, municipal bylaw, that may cost you a separate offence.

A person may be subject to a fine of \$50,000 per Sunday or holiday violation, so it is my understanding that the total fine assessed against a large corporation could be much greater than \$50,000. It could be a cumulative amount that would be much greater.

You might want to confirm that with legislative counsel, but I see he is nodding his head yes with respect to my comments in this regard.

Mr. Runciman: So each Sunday that they—

Mr. Kanter: Each Sunday is a separate offence; that is my understanding—each opening.

Mr. Chairman: Okay, I am going to be guided by the clerk, but I have allowed that information to be asked by Mr. Runciman because I think it is important to be asked. The question has been called, and it is my

understanding that when the question has been called, there will be no further debate. Am I right or am I wrong?

Clerk of the Committee: You are right, except did you put the question or did you ask for someone to move it?

Mr. Chairman: Ms. Hart, I think, moved the question. But I think it was important that Mr. Runciman have an answer to his question there.

Mr. Runciman: On a point of order, Mr. Chairman: I am not sure how the members feel about this, but I must admit that I did not hear Ms. Hart make that motion. I heard you making reference to it and felt that was the opportune time to ask some questions.

Mr. Chairman: You are right. I did do that, and then I asked if there was any member who wished to put the question and Ms. Hart did. I do not know whether she did it verbally. Maybe Hansard can tell us.

Mr. Farnan: Maybe we could go back to the record and check whether Hansard indeed has that on record.

Mr. Runciman: On a point of order, Mr. Chairman: I would think that this particular section of the bill has not been debated and I would think you would find that if there are members of the various parties sitting on this committee who wish to debate any given point, they should be provided that opportunity. If they were not provided that opportunity, I think any putting of the motion, if you will, would be found to be out of order.

Mr. Chairman: All right. I think, as a matter of fairness, that the practice has been to get through the entire section before it is voted on, so I think that is well-founded. We will set that aside for the moment and we will deal with the amendment by the New Democratic Party.

Mr. Philip: I thought I had circulated it but the clerk informs me she does not have a copy of another amendment to subsection 7(1) of the bill. I have it here. Would it be possible for us to discuss this or for me simply to read it into the record? It is similar, yet changes somewhat the last amendment which was just voted down.

Mr. Kanter: I think it is subsection 7(2).

Mr. Chairman: No, it is subsection 7(1). I think as a matter of fairness, Mr. Philip, in light of the decision I made with reference to Mr. Runciman's comment, that we will deal with the NDP motion on subsection 7(2) and in the interim the clerk can make copies of the amendment we do not have before us, so that all members have it before them.

Mr. Philip: I will see if I can find a clean copy because --

Mr. Kanter: On a point of order, Mr. Chairman: In that the government has had before the committee for some time an amendment to subsection 7(2) of the act—it was certainly submitted prior in time—would that amendment not be considered prior to the NDP amendment on subsection 7(2)?

Mr. Chairman: You are right. That is true. All right, I think we will do that. As a matter of fairness to the members of the committee so they have Mr. Philip's amendment to subsection 7(1) before them, can I have unanimous consent that we move on to subsection 7(2), the government amendment? In the interim the clerk will make copies of the new amendment that Mr. Philip has to subsection 7(1) and we could deal with that afterwards.

Mr. Philip: She has a clean copy.

Mr. Chairman: Okay, we will have those copies made. Do I have unanimous consent that we deal with subsection 7(2), the government amendment?

Agreed to.

Mr. Kanter moves that subsection 7(2) of the act, as set out in section 6 of the bill, be struck out and the following substituted therefor:

"(2) A bylaw under subsection 4(1) requiring a retail business establishment to be closed on a holiday shall provide that any person who contravenes the bylaw is guilty of an offence and on conviction is liable to a fine of not more than \$50,000."

Mr. Kanter: This amendment was moved to meet some of the concerns which not only opposition members but deputants, including the Coalition Against Open Sunday Shopping, brought before the committee. It is not always that I refer to the submission of CAOSS and say we have some agreement, but on this issue I believe we do.

On page 6 of the CAOSS brief they raise the concern that municipal councils could change the \$50,000 fine for illegally opening to a much lower amount. On page 12 they refer to issues of enforceability. Again, they refer to the fact that the government in this legislation makes it, in their view, clear—I think in our view, perhaps possible—that this fine amount can be altered downward to as low as \$1 by a simple motion in council.

That is not the intent of the legislation. We are essentially changing the word "may" to "shall," so that a municipal bylaw, as well as the provincial legislation, would be subject to a fine of not more than \$50,000.

Those are my introductory comments. I guess I would like to say in conclusion that I think this is a change that would be supported by most of the deputants who appeared before us and I hope we can consider it in this committee and adopt it.

Mr. Philip: I just do not see where this meets the concerns of CAOSS. CAOSS was afraid bylaws could be passed which would in fact lower the fine. This simply puts a cap on the fine. I am wondering how Mr. Kanter says this is somehow meeting the requirements of the testimony which appeared before the committee. What CAOSS and the other groups were saying is, "We're afraid municipalities will pass bylaws that will make it easier to open or, if they do open, it'll be a lower fine."

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The amendment I have before me says, "A bylaw under subsection 4(1) requiring a retail business establishment to be closed on a holiday shall provide that any person who contravenes the bylaw is guilty of an offence and on conviction is liable to a fine of not more than \$50,000." It simply says he is not going to be fined more than \$50,000; it does not say he is going to be fined less than \$5 or less than \$50. I do not see where that meets CAOSS's objections at all.

Mr. Kanter: I have certainly made my comments, but quite clearly CAOSS, in its brief, was referring to subsection 7(2) of the act when it said "in the very next section of the bill," referring I believe to subsection

7(2). I think in subsection 7(2), the government makes it clear that the \$50,000 fine amount can be altered downward to as low as \$1 by a simple motion in council.

That would not be possible to do under our amendment. I think the main concern of CAOSS, as I understand it, as it has been expressed to us, is that subsection 7(2) would permit municipal councils to reduce the maximum fine from \$50,000 to \$1. That would not be possible under the amendment we have proposed.

Mr. Philip: How does this prevent someone from having a lower fine? All it does is put a cap on the fine.

Mr. Kanter: It would make the municipal fine structure consistent with the provincial fine structure.

Mr. Philip: On which there is no minimum fine.

Mr. Kanter: We have had that debate, I believe.

Mr. Philip: The argument Mr. Kanter is making is that somehow this meets the concerns of the various groups which say a municipality could pass bylaws allowing for lower fines on a first offence or a second offence and so forth. All he is doing now is moving a motion which puts a cap, which says they cannot raise the fine to more than \$50,000, but it does not meet the problem of the municipality having a licence, if you want, a fine that amounts to a licence to stay open. Where is there anything that meets with CAOSS's objections?

Mr. Kanter: I am going to try this one more time. A violation of the provincial law will be treated much more seriously if these amendments are adopted, because we have increased the maximum fine, because we have taken a number of steps with respect to types of evidence, the possibility of obtaining injunctions. You will note that section 8 refers to application of council not only for the Attorney General but also for a municipality.

We believe these amendments will make this law much more enforceable. It was brought to our attention. It was felt there was a problem with respect to subsection 7(2) in that a permissive reading of "a bylaw under subsection 4(1) may," by use of the word "may" might enable municipalities to reduce the maximum fine. I believe that was the concern CAOSS expressed in its brief, and we have precluded that possibility through our amendment.

Mr. Philip: Let me try it again, because Mr. Kanter is obviously not explaining it, to my satisfaction, anyway.

The argument Mr. Kanter brings is that CAOSS has said, "We're afraid that municipalities can under this legislation pass bylaws which set so low a fine they will not be a deterrent to a violation of their bylaws." Is that correct? Is that Mr. Kanter's position of what CAOSS has said?

Mr. Kanter: I think I have explained the position as I understand it. CAOSS, in their brief, referred on page 12 to increasing the penalty to a maximum of \$50,000. In their next sentence, they refer to "this fine amount." I think it is a reasonable reading of their brief to assume that "this fine amount" refers to the maximum fine of \$50,000. They are concerned that the maximum fine can be altered downward. Our amendment would prevent municipalities from doing that. Therefore, I believe we have met the concern of Coalition Against Open Sunday Shopping in this regard.

Mr. Chairman: I do not want to be unfair to you, Mr. Philip, but I have to go back again. I know what you are saying and I know what Mr. Kanter is saying.

Mr. Philip: If you know what Mr. Kanter is saying, please explain it, because I do not think that I understand.

Mr. Chairman: Just let me have a few minutes. My concern is that we have already voted on what is the very thrust of your argument and your question to Mr. Kanter. Presumably, how you read CAOSS's submission and perhaps how Mr. Kanter reads it—really, I cannot recall which one is right.

Really what you are doing is reflecting back that the only way it can be remedied is by a minimum fine, and we have already dealt with the question of the minimum fine. It was voted against by this committee and I do not want to get back into it again, because that is really the only solution to your questioning and I suppose even to your next amendment, which I am not going to comment on at the moment.

Mr. Philip: Mr. Kanter is arguing that this is somehow meeting CAOSS's requirements, and I am asking him to explain how. This does not set a minimum fine of any kind. It does not say that a municipality cannot have a fine of \$1 if it wishes, and that was the main thrust of CAOSS's objections. To say that somehow under the maximum fine the most that could ever be fined is \$50,000 and meets their concerns, their concern being that people, in their words—if I may paraphrase their words—would in fact be licensed by the municipality to stay open by having fines that are so low, is not meant by this.

Mr. Chairman: I think, again, what I heard Mr. Kanter say was that they were simply looking for a maximum fine. I may be wrong, but if that is what he said, then I do not think anything is going to be advanced by asking further questions.

Mr. Philip: With respect, that is not what he was saying.

Mr. Chairman: That is what I heard. I guess the only way it will be established, whether I heard it correctly, is from Hansard.

You are saying that your interpretation of what CAOSS said is, that they wanted to ensure that some municipality could not levy a fine of \$1 or less.

Mr. Philip: That is what Mr. Kanter just said.

Mr. Chairman: That is not what we heard.

Mr. Philip: Now I am asking him how this stops a municipality from levying a fine of \$1 or \$5 or \$10, and Mr. Kanter has not answered that question.

Mr. Chairman: I thought he had. I will leave it up to Mr. Kanter if he wishes —

Mr. Philip: Mr. Chairman, are you here to chair these meetings in an objective manner or are you here to try to defend Mr. Kanter every time he gets into trouble trying to defend this abominable legislation? If you are going to act in a nonpartisan way, then keep the chair; if not, let somebody else take the chair and you can sit down and make your arguments.

Mr. Chairman: My job here is to see that the rules of the standing orders are observed. I am prepared to let Mr. Kanter answer again. My understanding—and I am not infallible—was that he in fact said that CAOSS had asked for a maximum penalty. You are saying they were concerned about the question of some municipality or a justice of the peace's awarding a dollar or less. That was not my understanding, but I will let Mr. Kanter answer for himself.

Mr. Philip: That might be a useful exercise for you to practise.

Mr. Ballinger: Ed, you do not have to be so nasty.

Mr. Chairman: I am not going to get back to the question of what I have already ruled on at least three times, and I have told you I am not going to go back to the question of what we voted on and which was defeated by this committee. If Mr. Kanter wants to answer that I am mistaken, fine, maybe I am mistaken, but I am telling you what I heard. Only Hansard will tell us whether I am right. Let's hear Mr. Kanter.

Mr. Philip: The role of the chair is not to try to interpret for the members what they said. There are members here who can say what they said, and repeat or summarize what they said.

Mr. Chairman: That is fine.

Mr. Philip: You are placing yourself in a very difficult position.

Mr. Chairman: No, I do not think I am placing myself in a difficult position at all. You are trying to put me in that position.

I think to this point I have adhered as carefully as I can to the question of being totally nonpartisan. I am telling you what I heard Mr. Kanter say. If I am wrong and you are right, then I prepared to hear the —

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Mr. Philip: Why do we not hear from Mr. Kanter?

Mr. Chairman: That is what I just suggested and you interjected, Mr. Kanter, would you tell us what you said?

Mr. Kanter: Let me try it again. The Coalition Against Open Sunday Shopping, in its brief, indicated it had a concern with the maximum fine. It had a concern that the maximum of \$50,000 could be gutted by a municipality. That concern has been met by our amendment.

Mr. Chairman: That is what I recall having heard. Whether that is right or wrong, one can only look into the question of the CAOSS presentation. You have a different version. Again, Mr. Philip, I am not going to let you go back and reflect on a vote that was taken by this committee and discuss it again. I say the thrust of your amendment and your statements to Mr. Kanter really are only dealt with by a minimum fine. We have dealt with that vote.

Mr. Philip: I am not referring to an earlier vote. I am referring to what CAOSS, in fact, did say.

Mr. Chairman: All right. Fine.

Mr. Philip: CAOSS, in fact, asked that there be stricter fines. It did not suggest in any way putting a cap on the total amount that someone could be fined, which is removing the judge's discretion, if you like, which the Liberals argued earlier was something that you should never do, but which of course they are now doing with this—that somehow by removing the judge's discretion and by putting a cap, that you are preventing the municipality from simply allowing, through bylaws, fines that were licences rather than fines.

Mr. Kanter has tried to paint it that way. I say that that is not what his amendment is doing. That is not what CAOSS asked for.

Mr. Chairman: I had Mr. Farnan, but he is gone. Mr. Runciman is next and then Miss Roberts.

Mr. Runciman: I wanted to, to some degree anyway, support what Mr. Philip said earlier, that Mr. Kanter did raise the matter of the \$1.00 fine. So I do not think Mr. Philip was incorrect to take him to task over that. He was talking about the maximum being \$1.00. That was practical, so he raised that concern.

I was not here during committee deliberations during the summer, but I would suspect that since CAOSS's position has been brought forward here, as well, that I would strongly suggest that we can determine—or I can certainly have it determined with my colleague—that, in fact, their concerns would go well beyond changing the wording of this particular section of the act to say "shall" versus "may" in terms of the maximum. I think that they, themselves, would much prefer to see some sort of a minimum fine incorporated into the act, as well.

Mr. Kanter was talking earlier about the rationale—and these things become kind of blurred when we are talking about one section versus another—for the \$50,000 and the fact that they wanted to do something that was going to act as a deterrent versus the \$10,000.

I think you can look at having some sort of a minimum incorporated in the legislation, as well as having the same sort of impact on other businesses. They may be much smaller operations that would be daunted by a \$10,000 maximum; obviously, but they may also have some extra consideration when they are looking at a fair minimum fine of whatever it may be. I think that may also have some impact in terms of discouraging people from making an attempt to get around or break the laws.

Mr. Chairman: I have to be fair, Mr. Runciman. I stopped Mr. Philip from reflecting back on what has already been decided by this committee. I am going to have to do the same to you.

Mr. Philip: I think what Mr. Runciman was pointing out is that you seemed to prevent me from talking about it, but you do not seem to prevent Mr. Kanter from talking about it. That was the point he was making.

Mr. Chairman: I guess only history will judge that, Mr. Philip.

Mr. Ballinger: How you interpreted that, Ed, is beyond me.

Mr. Philip: I will ask Mr. Runciman. Is that not what you were saying?

Mr. Runciman: My point was that Mr. Kanter had raised both the

question of the \$1.00 fine and had raised the question of CAOSS support for this particular initiative. I think it was legitimate on Mr. Philip's part to pursue both of those matters.

Mr. Philip: That is precisely what I have just said.

Mr. Chairman: Excuse me just one second while I confer with the---

Mr. Ballinger: Rare accord over there.

Mr. Chairman: Okay. Well, I have heard what you said and I guess that only those who will read Hansard will determine whether or not Mr. Philip is right that I have been unfair. Are there any other comments? Mrs.—Miss Roberts.

Miss Roberts: Thank you for elevating me.

Mr. Chairman: I just elevated you.

Miss Roberts: I would just like to speak to the amendment briefly. Mr. Runciman very clearly put forward what the amendment is; changing from "may" to "shall". So that the bylaw reads, "...shall provide that any person who contravenes the bylaw is guilty of an offence and on conviction is liable to a fine of not more than \$50,000." The bylaw must be in place, and when it is in place, there will be, upon conviction, a fine of not more than \$50,000.

I will not enter into a discussion with respect to minimum because you ruled that inappropriate.

My understanding of any particular law, when it is first put out, is that there are various test cases, things happen from time to time, and justices of the peace who deal with this type of legislation—even more onerous legislation—make decisions as to what the fine should be upon the evidence that is presented to them after the conviction has taken place.

Those things are very important. It is going to depend upon the ability and the perseverance of the various persons who are pursuing the perpetrators from time to time as to what they are going to be doing and what they are going to be asking for. But what this particular amendment indicates, and very clearly indicates, is that if a municipality is going to set out a bylaw, if there is going to be a bylaw, then that bylaw will have, on conviction, a fine of not more than \$50,000. That is in conjunction with subsection 7(1) as well. Whether you are prosecuted under the provincial or under the bylaw, it is up to the \$50,000.

Mr. Philip: May I ask Miss Roberts a question, Mr. Chairman?

Mr. Chairman: Mr. Philip.

Mr. Philip: I respect Miss Roberts's legal expertise and I know she is a fine lawyer and president of the Osgoode law association.

Mr. Chairman: I am sorry; this is not commercial TV, so we will not have---

Mr. Philip: Therefore, I want to ask her legal opinion on this. Is it not, in fact, that what this motion says ---

Mr. Ballinger: He is setting you up.

Mr. Philip: —is that a very large store or shopping centre that could make a fairly large profit, that might have a profit of \$100,00 or \$200,000 as a result of violating the law, would not pay more than a fine of \$50,000? Is that not what it says? It does not matter, you can earn four times the amount of this fine, but no judge may take into consideration the fact that you have made an awful lot of money, you are only going to pay a \$50,000 fine even if you have made \$200,000 for staying open in violation of the law on that particular day. Is that not what this says?

Miss Roberts: Mr. Chairman, if I might, through you. I do not give legal opinions to this august committee and I do not think I can do that appropriately because it is not my function to give legal opinions.

Mr. Ballinger: Not unless you want to pay.

Interjection: Through the nose.

Miss Roberts: I have listened to what my friend has said very carefully. As you will note, there are other parts of section 7 that deal with what a judge can take into consideration. I think it is important that we know that it is for each offence, or for each time there is an improper opening, that it is up to the \$50,000. This amount does not make any difference as to whether it is a small store or a large store. It depends upon the evidence that is presented to the presiding officer at the particular trial that is involved as to the amount of money. But it is up to \$50,000.

Mr. Philip: Okay. Without giving a legal opinion but giving a commonsense opinion or an English opinion of reading the motion, would you agree that it would be possible for a store that could show a profit, on one day of illegal activity, of four times this amount—

Interjection.

Mr. Chairman: Are you moving that we adjourn?

Mr. Ballinger: All right.

Mr. Chairman: Mr.—

Mr. Philip: —actually only paying a fine, as a result of this, of \$50,000?

Mr. Ballinger: Mr. Chairman, the bell has gone.

Mr. Chairman: Mr. Philip, my attention has been drawn to the fact that the House has adjourned, and therefore we will recess.

Mr. Philip: I know that Mr. Ballinger always tries to stall this bill.

Mr. Chairman: If you want, I think you can speak to Mr. Spring about it. We are in recess until after routine proceedings tomorrow.

The committee adjourned at 6:01 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

TUESDAY, NOVEMBER 15, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Campbell, Sterling (Sudbury L) for Mr. Polsinelli

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Hart, Christine E. (York East L) for Mr. McGuinty

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Hampton

Pope, Alan W. (Cochrane South PC) for Mr. Sterling

Clerk: Deller, Deborah

Staff:

Hopkins, Laura A., Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, November 15, 1988

The committee met at 3:58 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT

(continued)

LOI MODIFIANT LA LOI SUR LES JOURS FÉRIÉS DANS LE COMMERCE DE DÉTAIL
(suite)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Chairman: I would like to start and if I can have the opportunity of having the floor, to welcome the people who are watching this broadcast. We are the standing committee on administration of justice. My name is Bob Callahan and I am the chairman. We are dealing with Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Philip: As the chairman of another committee, the standing committee on public accounts, I would just like to point out that a member of the public accounts committee in Ottawa has just become mayor of York region. I am sure all of us who are also members of the public accounts committee wish him the best.

Section 6:

Mr. Chairman: I thought this was commercial-free television, but I guess it is no longer commercial-free television.

When last we met—namely, yesterday—we were dealing with a government amendment. Just to bring us up to speed:

Mr. Kanter moves that subsection 7(2) of the act, as set out in section 6 of the bill, be struck out and the following substituted therefor:

"(2) A bylaw under subsection 4(1) requiring a retail business establishment to be closed on a holiday shall provide that any person who contravenes the bylaw is guilty of an offence and on conviction is liable to a fine of not more than \$50,000."

I think we have had considerable discussion on this amendment. Are there any other members who wish to speak to the matter or are we prepared to vote?

Mr. Philip: I have an amendment to that. My amendment was just written up by counsel.

Mr. Chairman: I have that, Mr. Philip. Perhaps I will read that and we will deal with that first.

Mr. Philip: May I just have two seconds to speak to counsel, because I think there may be a slight change?

Mr. Chairman: All right.

Mr. Philip: I just explained to counsel that I did not want as radical a motion as she thought I did and that it would be much more in keeping with what will be acceptable to Mr. Kanter, I think. So we are working on that and it will be ready momentarily.

Mr. Chairman: The clerk has indicated, perhaps to save time, that everybody has the gist before them. I will read it out as it is, and then when counsel has finished changing it, we will insert the difference.

Mr. Philip moves that subsection 7(2) of the act as set out in Mr. Kanter's motion be struck out and the following substituted therefor:

"(2) A bylaw under subsection 4(1) shall provide that any person who contravenes the bylaw is guilty of an offence and on conviction is liable to a minimum fine of

"(a) \$1,000 for a first offence;

"(b) \$10,000 for a second offence; or

"(c) \$50,000 for a third and each subsequent offence."

Mr. Kanter: On a point of order, Mr. Chairman: I would just like to remind all members that yesterday we defeated a very similar motion which called for a graduated minimum fine which was to substitute for subsection 7(2). Therefore, I would argue that Mr. Philip's motion is out of order as it deals with a matter we have already dealt with and in fact defeated.

Mr. Chairman: I had given some consideration to that when it was placed before us. However, the previous motion referred to every person employed by or acting on behalf of a person carrying on a retail business and so on. This is actually more expansive. It deals with any person. Accordingly, I find that although it encompasses what was defeated yesterday—you are quite right—it is in essence a different motion. I would rule that your point of order is not well-founded.

Mr. Kanter: If I might just pursue that for a moment—

Mr. Chairman: I do not think you are entitled to do that. In fairness to the way I have ruled in the past, I have made the decision. Of course, the option is open to you, if you choose, to challenge my ruling.

Mr. Kanter: Perhaps we will hear arguments from Mr. Philip, hopefully in his usual concise style, and see if he can explain why this motion is in order. I believe it may be encompassed by the motion which was defeated yesterday. I am sure you will be vigilant to ensure that it is different from a motion on the subject of minimum fines which this committee did defeat yesterday.

Mr. Chairman: As I indicated before, I have ruled on the question of its being in order. Mr. Philip, having introduced it, has the opportunity to speak to it. One would hope, in line with what you said, that there was significant argument made on a motion which was not quite as comprehensive yesterday and one would hope that would perhaps allow him to be concise, but as you know, all members have the opportunity to speak as often as they wish under the rules.

Mr. Philip: Thank you for your ruling. My reasons for feeling that

this motion is actually quite different are somewhat different from the way in which you have ruled. I am not questioning your ruling, but it is different in this sense, that I think the motion that was defeated yesterday was setting up in the bill itself some minimum fines for first, second and third offences. What this section we are dealing with does is it is allowing the municipality to pass bylaws, and this deals with the bylaws. It is setting down the guidelines under which those bylaws are to be passed.

Mr. Kanter: Having heard that explanation, I would like to appeal your ruling, because I believe that Mr. Philip's motion yesterday, in moving that subsection 7(2) be struck out, clearly did apply to municipal regulations as well as provincial law. Therefore, I would appeal your ruling.

Mr. Chairman: Mr. Philip, Mr. Kanter has indicated there is a challenge to the ruling. That is not debatable. I will call for a vote.

Mr. Philip: I would request time to have our members present.

Mr. Chairman: You are entitled to up to 20 minutes. Do you need 20 minutes or can we agree on a time less than that so we can get on with this?

Mr. Philip: I think 20 minutes is usual.

Mr. Chairman: Are you asking for 20 minutes?

Mr. Philip: Yes.

Mr. Chairman: We will adjourn until—I am not sure whether to go by my watch or the clock—25 after the hour.

The committee recessed at 4:08 p.m.

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Mr. Chairman: We will resume.

Mr. Kanter: I moved that we challenge your ruling. I have had some opportunity during the recess to consider further the exact nature of your ruling, and while I have stated that the motion for a minimum fine structure for employees who breach municipal bylaws was defeated yesterday, I appreciate the distinction you have drawn, that a minimum fine structure for any person who breaches municipal bylaws may not have been debated. Therefore, on that basis, I will withdraw my challenge to your ruling.

However, I would expect you to be mindful of the very slight strand that keeps this motion in order and would urge you to ensure that any debate is limited to that question of a motion that calls for any person to have a minimum fine structure for breach of municipal bylaw. That is the only subject that ought to be considered for this amendment.

Mr. Chairman: I think I have already indicated that to Mr. Philip. As I am sure all members are aware, under the rules, members have the opportunity to speak as often as they wish. I would think, in the interests of time, that Mr. Philip, being a man of—

Mr. Farnan: Few words.

Mr. Chairman: —few words, will take that admonition to heart and

that this matter should be disposed of rather swiftly. Mr. Philip, you are on the floor.

Mr. Philip: Being a man of few words, I would like to hear the wisdom of Mr. Pope, because I have always appreciated his comments. He has just joined the committee and I know he will give a fairly eloquent defence of this excellent motion which I have been able to draft in such a way as to be in order.

Mr. Farnan: I think you should congratulate the chairman on his ruling.

Mr. Philip: I did that earlier.

Mr. Chairman: Mr. Pope, do you have anything to add to this?

Mr. Pope: Not until I have a sub slip.

Mr. Chairman: I am sorry. You can speak, but you cannot vote. Sub slip? In any event, it does not matter. You can speak to it. I will check to see if there is a sub slip here. The sub slip only says whether you can vote or not on any items. I do not see one here for you, but go ahead. Do you have anything you would like to add to the motion or the amendment to Mr. Kanter's amendment that Mr. Philip has put forward and that I have just ruled is in order?

Mr. Pope: So far I have been swayed by Mr. Philip, but Mr. Kanter can feel free to convince me otherwise.

Mr. Chairman: Nothing further to add then? All right. Are we ready to vote?

Mr. Philip: Perhaps I should provide some additional information to Mr. Pope which will no doubt trigger his eloquence. Basically, the government says that it is introducing provincial legislation. Over and over again at all of the hearings we have had testimony that the government has in fact abrogated its responsibility, that this is not a provincial piece of legislation, that it has given up its responsibilities completely to the municipalities.

In the interest of assisting the government to keep honest in its statements, I am simply adding some guidelines, if you want, some minimal fines, so that municipalities in their wisdom will not be in some way persuaded or coerced or unduly influenced to be lenient on people who would flout the law. In order to do that it seems quite reasonable, and indeed municipalities do it themselves, to set some minimum guidelines as to what might be an offence, what might be at least the minimum for the first offence and to have some graduation then in cases of those who constantly breach the law and show no respect for the bylaw as set by the local municipalities.

You will recall that the various briefs that have come before us have asked for this. They have said that in some areas the fine for breaching of bylaws was so insignificant that some lawbreakers consider it to be a licence. All this does is say: "You're not going to break the law and feel you can pay a minimum fine and create an offence. Rather, if you commit the first offence, you're going to get a fairly light fine, the second offence will be 10 times larger and the third offence will be five times larger than that or, if you like, 50 times larger than the first offence."

Mr. Kanter has argued that somehow some innocent person might be caught up with paying a \$1,000 fine. That seems to imply that somehow merchants are living on the moon, do not know what is going on in their community, do not read the local newspapers, do not watch the news. With all of the publicity this legislation has had, surely if any local municipality decides to pass a bylaw dealing with this, it is going to be on the front page of the local community newspaper. Indeed, we have even gone so far, in other sections of the bill—and we have an amendment to that effect that passed—to say that people who are interested should be advised of this when there are changes coming up.

Mr. Farnan: If I may interrupt, Mr. Philip is making a very important presentation. There is so much movement, and the photographic session taking place for the householders of the Liberal members on the committee—

Mr. Ballinger: Do not push your luck after the way you carried on in the House today.

Mr. Farnan: Really, we have to consider what this hearing is about. It is a very serious issue affecting the people of Ontario. It is not simply an opportunity for a photographic session for the Liberal members of this committee. I see we have switched chairs again. The only reason it appears that Mr. Chiarelli sat in the chairman's chair is for a photograph for his householder. That certainly is a charade and certainly makes a sham of these hearings, as we have suggested in the past.

Mr. Chairman: Let's get back on the amendment. Actually, I went down there to see whether it sounds any better from the chair of a regular member than it does from the chairman's.

Mr. Farnan: We resent the fact that our photographs were not taken.

Mr. Chairman: I think they have got some pictures of all of you.

Mr. Philip, would you continue?

Mr. Chiarelli: The next time a photographer is in the room, I will not take the chair.

Mr. Kanter: Mr. Chairman, on a point of order: On the motion before us, there seems to be a substantial change between the motion that Mr. Philip originally presented and the motion that is now before the committee.

Mr. Philip: No, Mr. Chairman.

Mr. Kanter: Mr. Chairman, if I might be permitted to complete my point of order, you ruled—and after some consideration, we agreed—that a motion that stated, as Mr. Philip's original motion stated, that any person who contravenes the bylaw is guilty of an offence is different from the motion we considered yesterday, which stated that "every person employed by" is guilty of an offence.

In other words, the very thin strand, or hair, as Mr. Ballinger put it, that kept this motion in order was the inclusion of the wording "any person." I notice now that the revised motion, which Mr. Philip has circulated, omits any mention of "any person." It is an addition to my motion, and I would therefore argue that Mr. Philip's revised motion is out of order.

Mr. Chairman: Mr. Kanter, perhaps to put it in perspective, I have now had placed before me, and I guess all members have, the real amendment to the amendment that Mr. Philip was making, and I will read it just to highlight the decision I am going to make.

"Mr. Philip moves that subsection 7(2) of the act, as set out in Mr. Kanter's motion, be amended by striking out 'a fine not more than \$50,000' in the last line and inserting in lieu thereof 'a minimum fine of (a) \$1,000 for a first offence; (b) \$10,000 for a second offence; and (c) \$50,000 for a third and each subsequent offence.'"

It is my judgement in reading that that it incorporates the words of Mr. Kanter's original amendment, which does refer to "any person" still, and therefore is still in order, and I so rule. Thank you, Mr. Kanter.

Mr. Chiarelli: On a point of order, Mr. Chairman: When we started the deliberations this afternoon, a motion was read, a motion of Mr. Philip, and in the course of debate a few minutes ago another motion was circulated. I did not hear whether or not the new motion that was circulated was supposed to replace the one that was read when we started our deliberations this afternoon.

Mr. Chairman: Perhaps you did not hear it, but what had happened was that Mr. Philip had placed before us an amendment and it was being worked over with legislative counsel and we decided that, rather than waste time, we would get on with the matter as currently presented, and that is the reason for the substitute motions or the clarification of the motion. That is how that came about.

Mr. Philip, would you like to continue? I would caution you, as I did before, that under the rules of the House, even in committee, repetitious argument will be ruled out of order, and since this was debated at some length, if you repeat the arguments you made before, I will rule them out of order.

Mr. Philip: I am sorry if I am repeating. I do not think I am repeating, I think I am trying to give the gist for some of the viewers who certainly would not have heard the testimony in the different municipalities that we travelled to, would not have heard those various mayors and councillors and business people come forward attacking this legislation and pointing out that despite the fact that the Solicitor General (Mrs. Smith) has risen in the House time and again saying that this is provincial legislation, in fact it is not. It is an abrogation of the minister's responsibility to have a store hours policy for this province.

Mr. Chairman: I would like to get to the amendment, Mr. Philip.

Mr. Philip: That is the gist of the amendment. The gist of the amendment is to try to put back into the bill some kind of provincial government responsibility for store hours and for the enforcement, and indeed to ensure that there be a penalty when people violate the law.

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The government argues—or individual members, it depends on who polls at the time and whether they agree or disagree, publicly or privately, as the case may be, as to what they have said in those polls—but none the less, some members of the Liberal party say that they are actually not in favour of Sunday shopping.

The delegations before us have argued that this is de facto Sunday shopping and the municipal councillors, aldermen and mayors have come before us saying, "At least set some minimum provincial standards so that we are not going to have an offender on one side of the street in a different municipality be treated differently than an offender on the other side of the street in our municipality, where we may have tough fines for the offence."

Mr. Chiarelli: What do you mean by Sunday shopping?

Mr. Philip: I would be happy to—

Mr. Chairman: No, you will not answer the interjection. It is out of order.

Mr. Philip: Sunday shopping is what the Solicitor General, when she was a member of the select committee on retail store hours, said she was so strongly opposed to. Sunday shopping is what will come about as a result of the municipal option, which the Solicitor General was also opposed to.

Mr. Ballinger: So you say.

Mr. Philip: So I say. Maybe you do not say it, but—

Mr. Ballinger: I do not say it.

Mr. Philip: Mr. Ballinger does not say it, but in fact who are you to be so overwhelmingly—

Mr. Chairman: Mr. Philip, Mr. Ballinger, interjections are out of order and you will address your comments through the chair and you will not respond to interjections. Please get on with the amendment that is before us and ignore the interjections.

Mr. Philip: Mr. Ballinger's very minority opinion, minority in this province, minority in British Columbia where in fact—

Mr. Ballinger: Different municipal structure and you know it.

Mr. Philip: —54 municipalities are now open as a result of this legislation, minorities certainly in the Liberal government—

Mr. Chairman: I am going to recess in a second.

Mr. Philip: —of New Brunswick where they have reversed this legislation because they found that it creates anarchy.

Mr. Chairman: Mr. Philip, you are out of order. Get back to the amendment and ignore the interjections and there will be no further interjections from any members of this committee. Let's get on with the amendment that is before us.

Mr. Philip: The argument that I am making is the same argument that the Liberal members in New Brunswick made when I was there, namely that unless you have some strong provincial guidelines you create anarchy. That is why the Liberal government in New Brunswick, after two years of experimenting with this kind of legislation, has reversed it. What I am trying to do in a constructive way is to say that this legislation is a bad mistake, but

notwithstanding the fact that it is a bad mistake, at least correct it so that it does not commit some of the same offences that the New Brunswick legislation created and which the government is now having to reverse at considerable cost, and considerable embarrassment, I might add, to those people who voted for that legislation in the first place.

I guess the Liberal members of this committee can use their majority, as they have done in the past, to defeat this amendment. I say to them, if you do vote that way then you are simply abrogating your responsibility, a responsibility that the public in Ontario gave to the Premier (Mr. Peterson) when he said, during the last election, he would not introduce this kind of legislation but rather that he would introduce legislation based on the recommendations of the select committee which the Solicitor General signed and which is directly contrary to what you are doing in section 4 of the bill and indeed what my section 6 amendment is trying to at least correct in a very small way.

I do not want to take up too much time because I am sure my colleague the member for Cambridge (Mr. Farnan), who has so many constituents opposed to this bill but who are in support of this amendment, will want to say something to it.

Mr. Runciman: Really, I am very supportive of this motion. I obviously supported the previous motion which attempted to also address this very serious concern. I am not sure about your ruling in respect to repeating what has been said in the past, but I would like to reiterate my view and I think my party's view in respect to the need for having some sort of a provision built into the bill that will act as an effective deterrent for individuals or firms contemplating violation of the act and opening on Sunday or violation of a municipal bylaw. I think that the current provisions are simply inadequate in that respect.

Yesterday Mr. Kanter tried to provide some sort of a rationale from the government perspective in respect to very clearly spelling out the maximum penalties and the fact that they were unqualified in respect to the interpretation by a judge. But I think the major concern here, as has been expressed by Mr. Philip and supported by my party, is that there has to also be written into the legislation some form of minimum fine. I think it is important to really make this legislation effective.

If we do not have that kind of provision built into it, I think we are going to see an opening there, a very apparent weakening of the legislation in respect to the deterrent impact it could have on a variety of individuals and firms which may contemplate opening on Sundays in violation of a municipal bylaw.

I simply want to reinforce our view that this is, indeed, necessary. The government, I think, through Mr. Kanter has been inflexible. I do not think it has really appreciated the very valid concerns that the opposition parties are expressing in respect to this issue, representing a great many people throughout this province who want to ensure that whenever this legislation goes forward—and looking at the government numbers we know it is going to go forward—that at least it recognizes those concerns in a meaningful way and simply not through window-dressing, such as the kinds of things that Mr. Kanter has brought forward to supposedly, as he indicated yesterday, address the concerns of the Coalition Against Open Sunday Shopping which are totally inadequate responses and do not in any meaningful sense address the concerns of people throughout this province.

I think Mr. Philip has made a commendable move here. He has pressed it on a number of occasions through a variety of alternatives. We are still getting a very negative response from the Liberal government. It simply does not appear to be willing to consider any objective, meaningful opportunities to try to address the very real concerns that are out there in Ontario.

Mr. Chiarelli: We are here today and throughout these proceedings as legislators. We are trying to write and pass a law. In this particular instance, in this particular motion, we are talking about imposing fines for breach of a municipal bylaw.

I can understand how there can be very strong emotions and strong feelings on this particular issue of the Retail Business Holidays Act and the question of Sunday openings. But I think we also have to maintain a perspective. I have had 20 years experience as a practising lawyer and I have to say, once again, with respect to the NDP amendment, that this is unprecedented, where for breach of a municipal bylaw they are going to have no maximum fine. Unlimited fines would be the effect of this particular motion or amendment. That is the way I read this particular bylaw.

Mr. Philip: There is a maximum.

Mr. Chairman: There is in the opening line that it will be not more than \$50,000, so there is a maximum.

Clerk of the Committee: It is struck out.

Mr. Chairman: I am sorry. I stand to be corrected by the clerk. It is struck out, so there is no maximum fine.

Mr. Chiarelli: That is right. There is no maximum fine under this particular amendment. We have seen a number of other amendments which have been proposed by the NDP which have had equally ludicrous results.

When Mr. Philip says that unless there are strong provincial guidelines, there will be anarchy created, I believe an amendment and a law such as this will create more anarchy than anything the government is proposing. I believe that time and time again amendments have been made to these proceedings which have been ill-thought-out and very unfair in their result. Quite frankly, I am also surprised that Mr. Runciman and the Conservative Party would support a provision that would put no limit on a fine for breach of a municipal bylaw.

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I can say that if this provision applied to any other subject matter, Sunday shopping, environmental concerns, bylaw infractions on a municipal level, it would be equally unpalatable and unacceptable in law for us, as legislators, to be imposing this type of provision.

I would say it is an ill-thought-out amendment, where there is no maximum fine for breach of a municipal bylaw, and I would certainly urge everybody on the government side to roundly defeat this amendment. I would ask the people on the other side to perhaps consider voting it down as well or at least Mr. Philip should reconsider and maybe withdraw his amendment because it has such an illogical and bad result.

Mr. Philip: Mr. Chairman, on a point of order: Mr. Chiarelli has misled this committee. He obviously cannot read.

Mr. Chairman: You do not mean that, "misled."

Mr. Philip: Accidentally, through his inability to read clause (c). There is a maximum fine. The maximum fine is \$50,000 for a third offence and any subsequent offence. "Subsequent" means any offence that happens after the one mentioned first. The third offence was mentioned; a subsequent offence is anything after that, each and every one. If you look up the word "subsequent" in the dictionary, you will find out exactly what it means.

Mr. Chairman: That is hardly a point of order. You will have an opportunity to reply to Mr. Chiarelli at that time.

Mr. Farnan: I would like to make a couple of comments, Mr. Chairman. First, I must congratulate you again on your handling of this committee, because it is a very difficult job given the climate.

I am always in awe and admiration of the quality of interaction and dialogue that results when two finely tuned legal minds grapple with an issue. I have to commend Mr. Kanter and Mr. Philip for the subtle distinctions they have been drawing on this issue and for speaking, I believe, with some conviction from both sides of the issue.

I happen to believe that in this particular case it is the judgement of Mr. Philip that sways me in the direction of the position he is putting forth. I have listened very carefully to the arguments put forward by both Mr. Kanter and Mr. Philip, and I ultimately come down on Mr. Philip's side and Mr. Runciman's side of this issue. I congratulate you on the argument you have put forward.

Let me say this: The people of Ontario, when this legislation is presented to them— The essence of the legislation, the Solicitor General has insisted, is the municipal option. By that, I believe the people of Ontario understand it will be the decision of the municipality to decide whether stores should be allowed to stay open on Sunday. In all the arguments and presentations I have heard from the minister, that was the focus of her remarks when she referred to the municipal option.

Mr. Chairman: How does this address the amendment before us?

Mr. Farnan: I want to thank you for raising that, Mr. Chairman, because that is precisely the point I want to make now.

Mr. Chairman: All right.

Mr. Farnan: The danger of taking the route suggested to us by Mr. Kanter is that you would also provide a municipal option in the matter of the fines that a municipality might demand for noncompliance with the proposed legislation. It is highly conceivable that in one area of the province you would have a very minor fine and in another area of the province you would have a much stiffer fine—

Mr. Chiarelli: No limit.

Mr. Farnan: That would be for exactly the same offence. I do believe that as we examine any system of justice, when there is a breaking of the law, a just society demands there be comparative punishment for the same offence. The same offence in Ottawa, Windsor, Toronto and Cambridge should demand, with any sense of fairness and equity, the same punishment.

As this committee travelled the province and heard from delegations, there were two things that were suggested to us. Yes, they wanted fines. They wanted tougher enforcement. Many of the delegations suggested to us that simply setting out a series of fines and having tougher enforcement would result in removing the need for this legislation altogether if we simply defined the tourism area and had reasonable fines with tough enforcement, this legislation was unnecessary. What they did demand, and my colleagues will remember, not just in one community but across the province, that there be consistency.

Mr. Chiarelli: This does not do it.

Mr. Farnan: Now, my friends, the beautiful thing about Mr. Philip's motion is that it is exactly what it does. Not only does it provide consistency, it provides much more. I am going to explain to you what this motion does.

Mr. Chiarelli: In Cambridge they can give a \$1-million fine on a first offence.

Mr. Farnan: In fact, let me say this is a brilliantly crafted motion.

Interjection: Don't stretch your imagination.

Mr. Farnan: It is a motion that (a)—

Mr. Ballinger: Maybe Mr. Farnan should re-read the motion before you make that comment.

Mr. Farnan: Mr. Chairman, now that the Liberal backbenchers have had their photograph taken in committee, and their main purpose of being present for the afternoon has been taken care of, I wonder—

Interjection: We are present every afternoon.

Mr. Farnan: —if it would not be a positive direction—

Mr. Chiarelli: And now that you are in front of the TV cameras at your own request.

Mr. Farnan: I wonder if it would not be a positive direction for the members of the committee to listen, because we are here in a co-operative process. My friends, I say to you that the people of Cambridge elected me to work with you to find solutions to problems.

Interjection: And million-dollar fines.

Mr. Farnan: The people of Cambridge, and I am sure the people of Ontario, do not expect their parliamentarians behaving in this kind of childish and immature manner.

Mr. Ballinger: I wonder if they saw you in the House today.

Mr. Farnan: We have here a really serious problem, the people of Cambridge—

Mr. Ballinger: I hope they saw you in the House today. You should talk about —

Mr. Philip: At least in the House he was defending his constituents instead of breaking a promise, which is what the Liberals were doing.

Interjections.

Mr. Philip: How can you trust—

Mr. Chairman: We will recess for five minutes.

The committee recessed at 5 p.m.

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Mr. Chairman: We will resume. I only ask you, Mr. Farnan—

Mr. Farnan: To stay with the motion.

Mr. Chairman: Yes. I am sure we will eventually lose our audience if we continue to repeat, so perhaps you would keep that admonition in mind.

Mr. Farnan: I believe that if the quality of the debate is the type of input being demonstrated by my colleague Mr. Philip, by Mr. Runciman earlier and by the opposition parties, we will certainly keep our audience; but if there are meaningless interjections on behalf of the government members of the committee while opposition members are trying to make their point, then indeed the people of Ontario will become disillusioned with this process.

Mr. Chairman: I caution you as well that that statement would invite interjections. I am here to try to keep interjections to a minimum, if not completely eliminate them.

Mr. Farnan: There is nothing I have said in my remarks which has not been pertinent to the discussion. The statement you made to me is that we can lose our audience based on what I have said.

Mr. Chairman: It is always up to them as to whether we lose them, but go ahead.

Mr. Farnan: That was your remark and I suggest to you that it is the interjections—meaningless interjections—we have had from the government members of this committee while opposition members are trying to make serious points that is what is killing the work of this committee.

Mr. Chairman: Why do you not get on with your debate? I think, in fairness, the interjections have been from all sides. They are all out of order and all members know they are out of order. I am trying to keep them from occurring.

Mr. Farnan: I have said it is a tough job you have and I have admired your efforts to keep everybody on track, and I continue to do so. Certainly, on my part and on the part of my party, you can be assured of our absolute co-operation in keeping to the task and in directing all of our efforts to improving this legislation.

Mr. Chairman: Okay. Any more comments on how well I am doing will certainly get rid of our audience for us. Would you like to continue?

Mr. Farnan: The point I was making in terms of the amendment of Mr.

Philip is that it has moderation. I point out moderation in the sense that the individual who breaks the law is not immediately subjected to a punishment which is extremely harsh; it is a reminder. For the first offence there is a fine of \$1,000. It certainly is sufficient for individuals who would break the proposed law to consider seriously whether they should break the law if they are going to be hit with a fine of \$1,000.

Second, the proposal of my colleague Mr. Philip is progressive. It is progressive in the fact that it does not move from a minor fine to this extraordinarily heavy \$50,000 fine, but it fines \$10,000 for a second offence.

Most important, my colleague's proposal is tough. It is a response to all of those delegations who appeared before us over the summer and said, "We want tougher legislation and we want enforcement." Having \$50,000 for a third offence certainly speaks to the seriousness with which we would view anyone who would break the law that did not permit him to open his store on a Sunday. The fact that there is a \$50,000 fine for every subsequent offence—

Mr. Ballinger: Minimum.

Mr. Farnan: —is indeed a clear indication to those individuals who would consider breaking the law.

Finally, Mr. Ballinger continually interjects with the word "minimum."

Mr. Ballinger: That is what the amendment says.

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Mr. Farnan: I must say that that amendment is worded very carefully. It was with some considerable thought that my colleague Mr. Philip worded this motion in this manner, because we realize that indeed there may be major corporations whose profits would be of such an enormous magnitude that perhaps they could even afford to pay such a fine, in defiance of the law, without being seriously hurt.

Therefore, there is an option for the municipality, if it views the size and the nature of the store, the nature of the mall, the nature of the major department, to say: "Maybe \$50,000 for this particular major player is not sufficient. Maybe it has to be \$75,000. Maybe it has to be \$100,000."

I say to my friend Mr. Ballinger, you were with this committee as we travelled the province and you heard, as I heard and as the rest of the committee heard—

Mr. Ballinger: Yes, I have observed your answers all across Ontario.

Mr. Farnan: I will say to Mr. Ballinger that he travelled with the committee. He was present when delegation after delegation said: "Don't go ahead with this bill. Define the tourist option, but for goodness' sake, let's have fines that mean there is going to be some form of serious effort on the part of the government and let's have serious enforcement."

Mr. Philip is responding to those delegations in a very practical way. He is not simply using a sledge-hammer where a scalpel might be sufficient. He has provided us with an amendment that, if we look at it objectively—and I think that is what we are asking the government to do, not to just take entrenched positions and to reject out of hand serious amendments—I think

what my colleague Mr. Philip is saying is, "Look at this legislation and see how balanced the amendment is."

If it is a small store that opens, it is possible to have a fine in which they will get the message: \$1,000. If it is a larger store, the second offence is \$10,000. I do not think the smaller stores will go past the first offence if they have a fine of \$1,000, but a large store would. Then, indeed, if after that they decide to go ahead anyway, there is within this legislation the ability for a municipality to say: "Look, for a major store, for a major mall, \$50,000 is not sufficient deterrent. We will make up our mind, based on the size of the store in our municipality."

The government members are great proponents indeed of the municipal option. This legislation that my friend Mr. Philip proposes has that fine balance between municipal option and provincial government intervention.

Mr. Ballinger: That is not what the amendment says.

Mr. Chairman: Mr. Ballinger, no interjections.

Mr. Farnan: I have sat here—

Mr. Chairman: I do not want a comment on Mr. Ballinger's interjections. Just continue.

Mr. Farnan: No, I am not going to comment on Mr. Ballinger's comment.

I have sat here and carefully argued the case for the amendment put forward by Mr. Philip. It is obvious that Mr. Ballinger is not listening, because he dismisses it out of hand. He does not argue the point. He does not wait until I have finished. He does not say, "Okay, we will give the member for Cambridge an opportunity to speak." Then he will have the opportunity to reply and, perhaps logically and objectively, attempt to—

Mr. Chairman: Mr. Farnan, get back to the amendment, please.

Mr. Farnan: But this is very important.

Mr. Chairman: It does no good to rhetorically address it to another member.

Mr. Farnan: I am speaking to the chair, Mr. Chairman, and I am saying to you that if this committee has any credibility, it is that if the government will put forward its ideas, the opposition will try to amend them and refine the legislation and then the government members will attempt to refute our arguments on an intellectual and objective basis. To simply be catcalling from the sidelines undermines the dignity and integrity of this process.

Mr. Chairman: I will rule on the interjections, Mr. Farnan. You have indicated to us your support for Mr. Philip's amendment.

Mr. Philip: Mr. Chairman, on a point of order: Is it not unparliamentary to call another member stupid? I do not consider it is very dignified, but I am wondering if it is not unparliamentary.

Mr. Chairman: I did not hear it, frankly. If it was said, I did not hear it.

Mr. Ballinger: I did not call the member stupid, just the amendment.

Mr. Chairman: If it was said, I will review Hansard.

Mr. Ballinger: I do not use that word too loosely.

Mr. Chairman: Gentlemen, let's try to get on with the business of this committee rather than—

Mr. Philip: Rather than debate with the Liberals.

Mr. Chairman: Mr. Philip, you are interrupting your colleague, who is trying to wrap up his arguments. Go ahead, Mr. Farnan.

Mr. Philip: I am just upset that my colleague is being abused by members who do not want to argue the merits.

Mr. Farnan: I just want to say that I can speak very unequivocally for the people of Cambridge on this issue because we have had a public forum on the issue. The people of Cambridge came out in large numbers to express their views and they talked precisely about this aspect of the legislation. The message the people of Cambridge gave me, the message they asked me to deliver, was very clear: They want fines that mean something.

I should say that the people of Cambridge are strongly opposed to the legislation. They have made no bones about that. They are strongly opposed to this legislation, but if the government must go on and push this legislation through against the wishes of the people of Ontario, the people of Cambridge are saying to it, "We want real fines, we want consistency and we want tough enforcement."

My colleague Mr. Philip has provided the government with a balanced amendment that allows the municipality to fine a small store or the larger store commensurate with the kinds of profit that store makes. It is progressive and it is tough. It is the kind of amendment the people of Cambridge, I can assure you, would want to see incorporated into the legislation.

I ask the government members to think of their own communities and to think of what the people in their communities are saying. I am quite sure they want real fines that fit the particular offence and they want tough enforcement. This amendment does that, and because it does, I ask you on an intellectual basis not to take a partisan position but to look at the merits of this proposal based precisely on its merits; not to discount it out of hand and have the usual party bloc vote where all the Liberals will put up their hands at the appropriate time and say, "No, we're not going to do that because we're going to push through this legislation the way we want it." Why? "Because we want it that way and we're not listening to the argument."

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Mr. Chairman: Do any other members wish to address the issue or are you ready to vote?

M. Pope: Il y a un conflit entre les membres du Comité au sujet de l'amendement que M. Philip a proposé.

Mr. Chairman: One moment, please. Allow the other members to have the benefit of—

Mr. Pope: I will switch, then.

Mr. Chairman: Are you going to go to English? All right.

Mr. Pope: I generally do half and half.

There appears to be a conflict—

Mr. Ballinger: I am working on my third level. Just speak slowly.

Mr. Philip: You are at level 3?

Mr. Ballinger: Yes.

Mr. Farnan: In English.

Mr. Pope: Mr. Chairman, could I just do one introductory paragraph and then go into the balance?

Mr. Chairman: Mr. Philip, we just had Mr. Farnan objecting to Mr. Ballinger interjecting—

Interjections.

Mr. Chairman: Can I interject? And now the same thing is happening. I will ask the co-operation of the members not to interject. It is out of order and it is contrary to the rules of procedure set down by the House and adhered to by all parties, supposedly. I think the people out there who are watching this would anticipate that we all conduct ourselves in that fashion.

Mr. Pope: I will just do one paragraph on the issue and then I will switch.

Il y a un conflit entre les membres du Comité représentant le Gouvernement et les membres de l'Opposition au sujet des amendements que M. Philip a proposés aux motions de M. Kanter.

Vous savez que M. Philip a proposé des minimums au sujet des infractions à la Loi. Il y a les commentaires de M. Ballinger et des autres au sujet du besoin d'un maximum. J'aimerais proposer, peut-être, une solution à ces problèmes-là. Je propose de lire cette résolution. J'aimerais avoir l'appui de chaque membre du Comité pour résoudre ce conflit entre les membres du Nouveau Parti démocratique et les membres du Gouvernement.

Basically, I think there is an easy solution to the problem. I heard Mr. Ballinger's comments and the comments of other members of the government on this committee over the matter of minimum fines. I think the concerns Mr. Ballinger and others have expressed can be met by a further amendment to Mr. Philip's motion if he agrees to it; that is, to set a maximum—

Mr. Chairman: I am sorry, Mr. Pope. The rules do not provide for an amendment to an amendment to an amendment, in other words, the third amendment. There can be only one amendment to an amendment.

Mr. Pope: Then I will do it another way.

Mr. Chairman: If Mr. Philip withdraws his amendment from the floor, but it is not allowed that way.

Mr. Pope: I would suggest to the members that I will not propose the amendment but I will speak about it—

Mr. Chairman: We could vote on this and then you could place an amendment on the floor.

Mr. Pope: I will speak to this motion and I will leave the issue of how you want to deal with it, if at all, in your hands, Mr. Chairman. I think there is some merit to the argument advanced by some of the members of the committee with respect to a maximum in order to provide for some certainty in both minimums and maximums. I think that is a consistent argument. If you are going to argue that you want to have some certainty vis-à-vis minimums, then the same rationale can apply, as Mr. Ballinger is now applying it quite correctly, in terms of maximums.

I think you may be able to resolve this matter between the members of the committee, Mr. Chairman, by actually providing at some point in time, through some appropriate mechanism, for the provision of a maximum fine in the legislation at the same time you are considering a minimum.

A majority of the members of the committee may reject both. But if we are worried about consistency of this provision, I think it could be done by setting up a maximum fine, perhaps equal to the gross sales of the retail business establishment on the day on which the contravention occurred. Members of the committee may want to look at adopting that into either Mr. Philip's resolution, if it can be done properly, or—

Mr. Chairman: That actually is one of the items in the bill and I appreciate that you have not had an opportunity to sit on this—

Mr. Pope: No, but I am specifically setting out a specific maximum. I did review the existing provisions of the bill. Secondly, members may want to consider, in terms of fairness—and these are notes that have been handed to me by members of our committee—some concerns for people who counsel or coerce a breach of this law, and whether or not the provisions should extend to them. The committee heard some evidence or information on this point during the course of its cross-province hearings as well.

I am struck by the intensity of the disagreements on some of these matters. I know it is long-standing. It may be that members of the committee can reach some consensus or compromise on this issue regardless of whether or not they ultimately pass Mr. Philip's resolution. Perhaps members of the committee may want to consider that in the spirit in which it is offered.

Mr. Chairman: Are we ready to vote?

Mr. Philip: I am willing to listen to any other arguments from the Liberal members, and if not, I would like at least an opportunity to sum up.

Mr. Chairman: Do any of the members of the government wish to speak to the matter?

Mr. Philip: I believe Mr. Ballinger, with his municipal experience, would like to speak to the motion.

Mr. Chairman: I think he can speak for himself, Mr. Philip. If you wish to sum up, go right ahead.

Mr. Philip: Mr. Chairman, I am sorry that Mr. Chiarelli is not here. He has made the argument that somehow this motion is draconian because it sets minimum fines. The minimum fine on a first offence is only \$1,000 dollars, which is a small penalty compared to a number of fines that are given for a number of offences in business. The minimum fine of \$50,000 is for a third offence and each subsequent offence. Somehow, Mr. Chiarelli tries to paint this as being draconian. He says, "What about the little corner store that is going to be given the fine of \$1 million?"

It seems as though the government members want it both ways. Yesterday we had an argument by Ms. Collins, who always presents her arguments in a coherent and reasonable way and without much of the rhetoric that we have heard around this committee. Basically, she said a judge will use some discretion and judges are not crackpots or open to draconian kinds of things. I believe that was one of her arguments.

One can assume that that same argument holds true. The third offence would be fairly serious. The person would have gone to court two times at least and would have probably been warned by the municipality several times before going to court. So, by the third offence, he would know exactly what would happen and he would have done it wilfully and with full knowledge of the consequences.

If we compare that open-ended discretion by the judge which the Liberals have been asking for in this to begin with—after the \$50,000—to saying that the judge is going to act in an irresponsible way and some poor, innocent victim, who has gone to court three times and is now in court for the fourth time for showing no respect for the law, is going to get a \$1-million fine and be put out of business when he operates a business that grosses only \$50,000 a year, I think just really boggles one's imagination. I do not think judges do that, and I think we have within our court system a whole appeal system that would certainly rule on the reasonableness of the judgement.

1730

If we look at the kinds of fines and penalties that have been asked for by groups that we heard, then we hear quite a different kind of story. For example, the Canadian Federation of Independent Grocers recommended that the fines should be 100 per cent of the gross sales earned on the day of the offence, plus an additional \$1,000. Now, 100 per cent of the gross sales of a large store would be considerably more than \$50,000.

REAL Women of Canada, hardly a radical, left-wing organization, argued for an amendment providing for an additional penalty equal to the amount of the gross revenues earned on the day of the offence. If you took a store like the Bay or one of these other large stores, that would be considerably more than the \$50,000 minimum which this modest attempt at compromise is moving.

The township of Oro has local, grass-roots, municipally elected people, and I am sure they have been re-elected today. I do not know; I did not check the election results for Oro. I was trying to find out what happened in Uxbridge and I was not able to get those results either, until I asked the member for that area. They wanted increased fines to 10 times gross sales on the day of violation, so those local municipal councillors felt that those people who flagrantly violate the law, not on the third or in this case, as it would be, on the fourth offence, but on the first offence, should have to pay 10 times the gross. That, I would agree, might be draconian. Perhaps their zeal for law and order took them a little bit to the extreme side of the penalty pendulum.

The Church of Jesus Christ of Latter-Day Saints, again hardly a radical organization, asked for increased fines and jail sentences for repeat offenders of current legislation. They were not content with a fine. They wanted the people who continued to flout the law to go to jail.

I ask you to contrast my fairly modest compromise position of saying that with people who have no respect for the law—despite all the advertising, despite the fact that it is in all the newspapers, despite the fact that the trade papers would have full discussion of this legislation—when somebody goes and violates it on the first offence and then the second offence and then the third offence, now on the fourth offence, we allow some discretion, I at no time was suggesting what the Church of Jesus Christ of Latter-Day Saints was suggesting—sending them to jail.

On the other hand, my friends in the United Steelworkers of America, Local 895, are closer to the position of the Church of Jesus Christ of Latter-Day Saints. They have advocated that the law should provide jail sentences for those retailers who publicly declare that they will defy the legislation.

My colleague Mr. Pope has an amendment, which I believe we will be dealing with probably next week at some point in time, in which he talks about those who would counsel or encourage others to break the law. Of course, that may be seen as analogous to a person who would publicly declare that he would defy the legislation. The public declaration would have a purpose not only of defying the law but also of encouraging others to wilfully break the law.

It seems to me that in a civilized society, legislators, be they municipal, provincial or federal, have a right to set standards and to advise people as to what the rules are. The rules have to be fairly clear and the rules have to be known, and people who break those rules have to understand that there are consequences for it.

Simply leaving it open-ended with no minimum fines is a declaration that the law is less important; that you might like to test it and find out whether or not you can get away with it; that we are not really serious about this business, that some municipalities might be free to go after a penalty of \$5, \$10 or \$50; that it could be no more an offence to violate this law than to park illegally in a parking spot and let the meter go on when you happen to go overtime at the hairdresser.

That kind of thing can happen. Indeed, the municipalities said there may be municipalities that will do this kind of thing. The municipalities that were concerned were the ones that said, "We wouldn't want to do it, but we are concerned that our neighbours might and if that happens the whole thing breaks down and we have anarchy."

Indeed, that was one of the arguments that we had when we talked to some of our colleagues in the Maritimes about the problem with the municipal option period. If you allow so much discretion at a local level for something that really requires some kind of enforcement on a province-wide basis, you end up in an anarchy situation. The argument they used when they said that the municipal option did not work and created anarchy was that it makes absolutely no sense to have labour laws that are given to the municipalities so that you could have one set of fines for breaking a labour law.

This is basically labour legislation, this and Bill 114. It is legislation that deals with whether a person is going to work on Sunday or not

going to work on Sunday. That is the bottom line, as the Premier would say. Labour legislation cannot be dealt with at a municipal level. You cannot have a factory on one side of a border dealing with a problem in one way, with one fine for doing something to its workers, and on the other side of the municipal boundary line have different standards, or if they have the same standards, have different fines for violating those standards.

All that we are asking for is this: if you contrast what I am proposing and compare it to some of the penalties that have been asked for from some of the groups out there, this is a fairly modest proposal. I suppose some of the groups that appeared before us will say: "Mr. Philip, you haven't gone as far as we would like to go. You are watering down. You are soft on law and order. You don't have the same respect for the law that we have. We think that if people are warned, if they know what the law is and if they break it, they should be hit hard. Teach them a lesson." I say, "I probably agree with you."

But what I am trying to do in a modest way is to say, "Fine, I agree with those people who say this is bad legislation." At the same time, I recognize the reality that the Liberals have a large majority and that they are going to force this through. It may be in whatever year they get it through, but they will get it through some time before the next election. They will get it through unless they change their mind. That being the case, then, at least try to improve it.

1740

I must say that I am discouraged that out of all the proposals—and they are serious proposals because they are proposals for the most part found in either the content or the spirit of the more than 3,000 representations that were before us—Mr. Kanter and his colleagues have decided to accept only one amendment so far.

I have listened and Mr. Pope and his colleagues have listened to what the people out there were saying and we tried to reflect that in these amendments.

Mr. Kanter: On a point of order, Mr. Chairman: The government has moved four or five amendments which have been accepted by this committee. We have proposed several more. It is simply not correct to say, as Mr. Philip did, that the government is accepting one amendment. In fact, we have accepted an amendment that Mr. Philip proposed.

Mr. Philip: You have accepted one amendment that the opposition parties have proposed. The opposition parties have proposed a number of amendments which I am sure you will have to agree reflect the presentations that were made to the committee.

Mr. Kanter: On a point of order, Mr. Chairman: The government has adopted a number of amendments, incorporating some of the concerns of interest groups that came before this committee. I think that is an important distinction and I would like to have that recognized by Mr. Philip.

Mr. Chairman: I am sure it is on the record. It is not a point of order. Mr. Philip, continue. I would bring you back; you indicated you were summing up. A lot of the things you are indicating now, I did not hear before; so if you are summing up, I would ask you to sum up.

Mr. Philip: I am trying to present to you, Mr. Chairman, and to the

members of the Liberal caucus who are here—and we will be voting on this—that I think our amendments and those of the Conservatives do reflect what is in these briefs that were presented to us in the presentations we received, both oral and written. Out of the ones that have been proposed by the opposition, they have been rejected out of hand and not even listened to. I do not think Mr. Kanter can deny they are reflected in the briefs and in the hearings; we did not invent these out of thin air. In very many of them we can point to specific briefs that they have sprung from.

I appreciate that people like Ms. Collins and Mr. Ballinger are listening to my presentation at the moment. I hope they will consider voting for the amendment and voting for perhaps a less extreme form of penalty system than was asked for by a number of the delegations that appeared before us, but a proposal that is made in the spirit of compromise to try to make a bill that we disagree with at least a little bit more acceptable to all those people, the 95 per cent of the delegations that appeared before us which were opposed to this legislation, and at least make it a little bit easier for them to swallow—at least until after the next election when, hopefully, new legislation will be introduced.

Mr. Chairman: Thank you, Mr. Philip.

Those in favour of Mr. Philip's amendment, please signify?

I am sorry, Mr. Pope, I do not think you can vote.

Mr. Philip: Could we have 20 minutes for our usual wait for a vote?

Mr. Chairman: Do we have unanimous consent?

Mr. Philip: May we have the vote next Thursday?

Mr. Chairman: Do we have unanimous consent that we receive Mr. Pope's substitution slip within the 30 minutes?

Agreed to.

Mr. Chairman: Those in favour of Mr. Philip's amendment, so signify. Those opposed? In my opinion the nays have it.

Motion negatived.

Mr. Chairman: The next amendment we have is Mr. Kanter's original amendment. Perhaps I should read it again, in light of the length of time since we have read it before.

Mr. Kanter moves that subsection 7(2) of the act, as set out in section 6 of the bill, be struck out and the following substituted therefor:

"(2) A bylaw under subsection 4(1) requiring a retail business establishment to be closed on a holiday shall provide that any person who contravenes the bylaw is guilty of an offence and on conviction is liable to a fine of not more than \$50,000."

Any debate on that motion?

Mr. Pope: I have a question with respect to coercion or counselling to commit, whether that is going to be included as a penalty for this specific offence.

Mr. Kanter: First, I appreciate the question. I think it is a valid question. I am not sure that it relates specifically to this amendment, but what I have done is asked legislative counsel, Mr. Spring, to check into the issue which Mr. Pope raised about counselling or coercion to breach this law. I believe there was some specific legislation proposed by the Attorney General (Mr. Scott) and passed, I think, very late in 1987 or early in 1988. I have asked Mr. Spring to look into this and report to the next meeting of our committee on that very issue. I think that might be an appropriate way of dealing with the counselling or coercion issue.

I can assure you that Mr. Spring is more qualified to deal with the issue than I am. That is Mr. Spring there. He is legal counsel for the ministry. He is available for question by you or any member of this committee and I have asked him to look into that issue.

Mr. Chairman: I think the Provincial Offences Act provides for the equivalent of section 21 of the Criminal Code, what you are talking about, parties to offences.

Mr. Pope: Maybe I can just put this in. I will leave it in the good hands of counsel and he and Mr. Kanter can then advise the committee at its next sitting if that is appropriate. This is the kind of thing which has been suggested for consideration:

I move that section 7 of the act as set out in section 6 of the bill be amended by adding thereto the following subsection:

"(2a) Every person who coerces, counsels, or influences another person to contravene section 2, a regulation under section 4 or a bylaw under subsection 4(1) is guilty of an offence and on conviction is liable to the same fine as is provided for a contravention of section 2, the regulation or the bylaw as the case may be."

Maybe I could move that as an amendment to Mr. Kanter's motion and then I will give this to counsel and counsel can deal with this.

Mr. Kanter: I think what Mr. Pope said, if I understood it, is that that is an additional subsection, a subsection 7(2a). I think that would be quite appropriately dealt with as an additional amendment and something counsel could look at and comment on and we could debate at our next meeting. I would suggest that we continue to debate and possibly vote on the amendment I have moved.

Mr. Chairman: Okay. Are you content, Mr. Pope, that we table this? It would be the next amendment after the one that is presently on the table. We would have counsel look at it—we are obviously not going to get to deal with it tonight—and we can then deal with it after we finish with Mr. Kanter's amendment, as it is a separate subsection.

Mr. Pope: Yes. I am not interested in having an argument on whether it is or is not. I will leave that in your hands. I do have another proposal with respect to the maximum, though.

Mr. Chairman: Do you have another amendment?

1750

Mr. Pope: Yes. I move that Mr. Kanter's motion respecting subsection—

Mr. Chairman: I am sorry. Are you trying to amend Mr. Kanter's motion or Mr. Philip's motion?

Mr. Pope: Mr. Kanter's. You told me I could not amend Mr. Philip's motion.

Mr. Chairman: As I read it, it does not fit into Mr. Kanter's motion. That is the difficulty I have. There is nothing in Mr. Kanter's motion that refers to a minimum fine, so I do not see how it can apply. We have defeated the amendment that referred to a minimum fine, and this one you have put forward says, "I move that Mr. Kanter's motion respecting subsection 7(2) of the act as set out in section 6 of the bill be amended by adding before 'a minimum fine of.'" There is nothing about minimum fine in Mr. Kanter's motion.

Interjections.

Mr. Chairman: I would indicate to everybody that we are not in recess. All right. We have a motion by Mr. Pope which I would consider to be in order.

Mr. Pope moves that Mr. Kanter's motion respecting subsection 7(2) of the act as set out in section 6 of the bill be amended by striking out "a fine of not more than \$50,000" and inserting in lieu thereof "a maximum fine equal to the gross sales of the retail business establishment on the day on which the contravention occurred."

Mr. Pope: I am pleased to move this amendment on behalf of my colleagues in our caucus. I would refer the members rather briefly to the comments Mr. Philip made earlier with respect to the nature of the submissions made by a variety of groups that appeared before this committee. I will not review them in any detail, but just indicate that there was a wide spectrum of opinions on fines and penalties with respect to this legislation. There was an attempt earlier, which was defeated, by Mr. Philip to set minimum fines and now we are dealing with the issue of the maximums.

Like Mr. Philip, we felt that those who made representations with respect to jail terms—we thought there was a middle ground. This amendment attempts to establish a middle ground which is perhaps more acceptable, given the variety of size and nature of businesses and the variety of attitudes towards adhering to this legislation or not. We hope this kind of amendment will find favour with members of the committee. We feel it will find favour as a good middle course for the people who took the time to make submissions to this committee and the Legislature on this matter. End of comments.

Mr. Chairman: Do any other members wish to address the motion?

Mr. Philip: We will be supporting the amendment. Mr. Chiarelli just questioned my earlier statement that our amendments, moved by both the New Democrats and the Conservatives, were in fact found in any of the briefs, probably trying to indicate not that they were not found in the brief but that they were not found specifically in the briefs, but were rather found in the spirit of the briefs.

I would like to refer Mr. Chiarelli to the fact that the Canadian Federation of Independent Grocers asked specifically for that amendment and, to use its words, that "the fine should be 100 per cent of the gross sales earned on the day of the offence." Then they went on further. They wanted a little bit more than what Mr. Pope has asked for, plus an additional \$1,000.

REAL Women asked for an amendment to provide for an additional penalty equal to the amount of the gross revenues earned on the day of the offence. As I pointed out earlier when Mr. Chiarelli was not in the room, the township of Oro asked for 10 times the gross sales. There was a number of other people who suggested it, but I do not have the records of them. But this gives some indication that there were specific proposals.

Surely the Canadian Federation of Independent Grocers, those people who are dealing in the business, would understand two things: (1), the seriousness of the offence and therefore would not suggest a penalty that would be excessive or that would not work; and (2), they would also indicate how it would be possible to calculate that. I think the argument Mr. Kanter will try to make—and I do not want to anticipate his arguments—is that it would be too hard to audit as to exactly what the gross sales were on a given day and that therefore a more specific amount of fine should be what we would go for.

Of course, we have suggested specific amounts. That has not been acceptable to the government members, who do not seem to be willing to accept very much that the public has asked for. In this case, all that we are saying is that the Canadian Federation of Independent Grocers surely knows its business. They know they can calculate that, it would be easy enough to calculate, and it seems reasonable that this should be a penalty.

Furthermore, a number of groups have asked for and proposed that specific penalty, and if I am not mistaken—perhaps we can check with research or indeed I can check tonight—the select committee on retail store hours made that as one of the proposals. I may be wrong, and Mr. Pope may be able to correct me or counsel me on this, but I believe the Conservative Party task force made a similar recommendation. I am certainly strongly in favour of Mr. Pope's amendment.

Mr. Kanter: I realize we are drawing close to the hour of six o'clock. However, I would like to raise a point of order which you might want to consider over the break between this and the next meeting of this committee.

The section of the bill we are considering is subsection 7(2), which relates to municipal bylaws. I think it unlikely in the extreme that the Conservative task force, for example, dealt with the penalties under municipal bylaws, since I do not believe the Conservative task force supported a local option.

Similarly, I suggest that Mr. Pope's motion does not deal with a municipal bylaw. Certainly none of his or Mr. Philip's comments indicates that it is limited to or applicable to a municipal bylaw, and therefore I ask you to rule Mr. Pope's motion out of order with respect to the amendment to subsection 7(2) of the act.

I would ask you to consider this. I suspect you may not be able to give us your ruling until the next meeting of this committee.

Mr. Chairman: Just a second. Would you run that by me again?

Mr. Kanter: We are considering an amendment that relates to a breach of a municipal bylaw. We are not considering subsection 7(1), which is a breach of provincial law. The arguments I have heard from both members suggests that they seem to assume we are considering a section that relates to a breach of provincial bylaw. That is simply not the case.

The essence of the amendment that I have moved relates to bringing a penalty for the breach of municipal bylaws into consistency or conjunction with a breach of provincial bylaws. That is the essence of the amendment. I would argue that any amendment to that amendment must relate to a breach of municipal bylaws, not a breach of the provincial law, which it appears that both members are speaking to.

Mr. Chairman: I am not going to rule on it. My initial reaction would be that their comments are out of order, but I will think about it. The bell has rung. My brain at this point is sponge. Some people would say it is sponge most of the time.

We do not sit on Monday. We are adjourned until Tuesday after routine proceedings. Mr. Chiarelli, as the vice-chairman, will take the chair. I will not be here.

The committee adjourned at 6:02 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

TUESDAY, NOVEMBER 22, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Dietsch, Michael M. (St. Catharines-Brock L) for Mr. Callahan

Hart, Christine E. (York East L) for Mr. McGuinty

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Reville

Sola, John (Mississauga East L) for Mr. Polsinelli

Also taking part:

Kormos, Peter (Welland-Thorold NDP)

Pope, Alan W. (Cochrane South PC)

Clerk: Deller, Deborah

Clerk pro tem: Mellor, Lynn

Staff:

Hopkins, Laura A., Legislative Counsel

Witnesses:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, November 22, 1988

The committee met at 4:06 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 6:

The Vice-Chairman: Before we get under way, I would like to make a couple of very brief announcements. First of all, for everyone present, this is a nonsmoking committee. Also, I would like to welcome the new member for Welland-Thorold, Peter Kormos, to the standing committee on administration of justice, I believe for the first time.

The matters that we are dealing with today involve an amendment to a motion which Mr. Kanter had placed several weeks ago. The motion had been moved by Mr. Pope. I do not think that the members require that I read the motion at this point. But at the end of the last session, Mr. Kanter, on a point of order, indicated that he thought the motion was out of order and a point of order has been considered by the chair, which I will read at the present time.

Regarding Mr. Pope's amendment to Mr. Kanter's motion on section 6, subsection 7(2), there are essentially two arguments that have been put forward to suggest that the amendment moved by Mr. Pope on Tuesday, November 15, 1988, may be out of order. I would like to address those concerns individually.

It has been proposed that the amendment is so similar in nature to one previously dealt with by this committee that it contravenes standing order 43. However, with respect to this argument, it must be pointed out that while the previous motion dealt with "a fine equal to the gross sales of the retail business establishment," it was in reference to section 6, subsection 7(1). The fine referred to an offence under the provincial act. Mr. Pope's motion uses similar wording, but this motion clearly refers to section 6, subsection 7(2), which refers to an offence under a municipal bylaw. In light of this specific difference I find that the motion is not in contravention of standing order 43 and is in order.

The second argument was that if the motion were carried it would be in direct contradiction to subsection 7(1) as it now stands, as one refers to a maximum fine of \$50,000 and the other refers to a maximum fine equal to the gross sales of the retail business establishment. Once again it must be pointed out that subsection 7(1) refers to the provincial act and subsection 7(2) refers to a municipal bylaw.

My ruling is that the motion is sufficiently different from any motion previously moved and does not contradict subsection 7(1) and is therefore in order.

That having been ruled, what we have on the floor at the present time is Mr. Pope's amendment to Mr. Kanter's motion. In summary, it says:

"I move that Mr. Kanter's motion respecting subsection 7(2) of the act as set out in section 6 of the bill be amended by striking out 'a fine of not more than \$50,000' and inserting in lieu thereof 'a maximum fine equal to the gross sales of the retail business establishment on the day on which the contravention occurred.'"

That motion is now open for debate.

Mr. Ballinger: On a point of order, Mr. Chairman: How can we be discussing a motion when the mover is not present?

The Vice-Chairman: The motion was already made at the last session on November 15. The only issue that we were dealing with today at the start of this session was the point of order which had been raised after the motion had been introduced by Mr. Kanter. The motion at this point is open for debate.

Mr. Farnan: First of all, I commend you on your judgement in ruling upon this particular matter. It is a very finely balanced decision on your part. I find myself agreeing with it.

I appreciate the fact that we have the opportunity to discuss this particular amendment. As to the member who moved this amendment not being present, we are all aware that he is a very dedicated member of the House and of the committee. There would be a very substantive reason for his not being present. I accept that. I hope that the other members of the committee accept that.

Mr. Ballinger: On a point of order, Mr. Chairman: My purpose for raising that had nothing to do with his absence per se. In the debate, if the member is not here, how is he going to respond to any of the arguments that are being proposed?

The Vice-Chairman: Are you raising a point of order, Mr. Ballinger?

Mr. Ballinger: I just want to respond to Mr. Farnan.

The Vice-Chairman: You do not have the right to respond, Mr. Ballinger. You will have a right in due course.

Mr. Ballinger: On a point of clarification then, Mr. Chairman.

The Vice-Chairman: When your turn for debate arrives, you can comment on Mr. Farnan's comments. Mr. Farnan, would you continue, please?

Mr. Farnan: I want to thank Mr. Ballinger for his interjection. I suppose he feels there are some grounds for that. On the other hand, this particular motion is quite substantive and I think would stand on its merits. Probably Mr. Pope has a certain degree of confidence that his colleagues in the New Democratic Party anyway would be continuing the debate on this particular item because it is of such an important nature that he will probably be back in time to participate in the debate.

Mr. Philip: He will read our comments over the weekend so that he will be able to respond on Monday.

Mr. Farnan: Mr. Chairman, in your decision you had this to say: "It has been proposed that the amendment is so similar in nature to one previously dealt with..." I want to make another distinction. That is to bring out the difference in the motion put forward by my colleague Mr. Philip, which I believe was not accepted by the committee but which had quite a lot of merit to it. This particular motion again is an attempt at clarity.

The motion that Mr. Philip introduced, as you remember, had a varying degree of fines. Just to remind the members, it was \$1,000 for a first offence, \$10,000 for a second offence and \$50,000 for a third and each subsequent offence.

We are, of course, talking about individuals or chains which would defy the law and open their stores on a Sunday. Here we have Mr. Pope bringing up an amendment, which says, "a maximum fine equal to the gross sales of the retail business establishment on the day on which the contravention occurred."

I am sure that viewers across Ontario, as they tune into this important debate, on which they have made a great effort to bring forward their ideas and present them to the government, will be very interested in how we handle this particular amendment because it was an issue that was brought up on many occasions as we toured the province. I can recall delegations such as Canadian Tire, business improvement associations and individual businessmen, and as they appeared before the committee, very often they would say to us: "Why not leave well enough alone? Redefine the tourist exemption, but when it comes to fines"—they were particularly interested in having realistic fines and stringent enforcement. Of course, Mr. Pope's motion addresses that in terms of a realistic fine.

Mr. Philip's amendment had a varying scale that was gradually increased with the number of offences. This particular motion has a varying scale, but it is increased with the size of the operation in question. That seems to me very logical. I am sure my colleagues the government members of the committee would agree with that. The old dictum to make the punishment fit the crime is a reasonable approach to take. When a small store defied the law, the fine would be less and in line with the size of that particular store. If a medium-sized store defies the law, the fine is proportionately increased. If one of the major stores defies the law, again, we have a proportional increase of fine and that store is obligated to a maximum fine equal to the gross sales of the retail business establishment.

I have discussed the whole area of fines with many people in Cambridge, particularly small and medium-sized businessmen, and I can assure the members of the committee that the businessmen of Cambridge, as with the businessmen across the province, are very much interested in how we approach the whole area of fines. Of course, they want the assurance that enforcement will be tough. That is an assurance, perhaps, that they question when enforcement has to be implemented by a Liberal government. They look at areas like environment and they say to themselves, "Well, you know, you can have laws, but if you do not have proper enforcement of the laws—health and safety in the workplace—the laws, in a sense, become meaningless." In other areas of this bill, as we discuss the bill, we hope that enforcement will be a concern for all members of the committee.

It is somewhat disheartening, Mr. Chairman, you will agree with me, when we read in the paper that Mr. Magder once again opened his store in defiance of the law.

Mr. Ballinger: And, once again, he was charged.

Mr. Farnan: And, once again, he was charged. And, once again, he will just put it on the top of the list of fines he has received and then the people of Ontario will continue to scratch their heads and say, "You know, isn't it strange how a business making large amounts of money is allowed to flout the law?"

The poor, average guy working for a living breaks a minor area of the law and immediately the enforcement agencies are on his case. The average retail worker, the average worker in Ontario, the small businessman has to look at this whole area and say to himself: "Is there one law for the little guy and another law for the rich and the mighty? Is there a double standard working in Ontario?" Of course, New Democrats are committed to ensuring that there will be fairness in the application of legislation in all areas.

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Mr. Philip: Including taxation and fines.

Mr. Farnan: Absolutely, including taxation and fines. That is why we feel very encouraged when we find our colleague in the third party, Mr. Pope, coming forward with an amendment such as this. Obviously, he has given fairly serious consideration to this particular aspect of the legislation and he has come up with perhaps a formula that could work.

One of the things that the people of Ontario look for from the legislators of this province is some degree of consistency. By that, I think they like to be able to look at a piece of legislation and say: "Yes, I understand what this legislation is about. It is fairly simple. It is fairly clear. I know what the rules are." They can look at this and they can say, "Yes, there is a certain fairness in a fine that is balanced with the size of the store and the amount of sales that are made on that particular day."

Finally, my last word on this would be that when you look at the fine itself, it is a very meaningful fine. It talks about a "fine equal to the gross sales of the retail business establishment on the day on which the contravention occurred." We all know that these stores are often tempted to defy the law on days when they will draw away or attract customers from other areas and very often they receive a boom in sales, so the gross sales, in addition to the salaries they must pay out, do indeed represent a significant fine. I think the people of Ontario would say to us, "Let's have this amendment, because there is a fairness to it and because it has the ability to be tough."

Mr. Philip's motion, like our amendment, as I said, may have an element to it that, on reflection, the intent may have been to get that fairness, but for the first and second offences, \$1,000 or even \$10,000 may not have been a sufficient deterrent to a large store to go through that first or second offence. I understand that intent and I supported the intent. As always, my colleagues on the government benches will be aware that New Democrats have come to these hearings with the intent of working with the government and saying to our government colleagues, "Let's find ways that we can constructively work together to get the best possible legislation."

If this legislation must go through and you are determined to use your majority to ram it through and force it on the people of Ontario against their will, given that premise, then my colleagues and I are prepared to say all right, you are going to use your mighty majority. You have discarded the—

The Vice-Chairman: Are you referring to the defeated motion of Mr. Philip from a previous day or are you referring to the four corners of this particular amendment?

Mr. Philip: I think he is referring to the four corners of this particular amendment.

Mr. Farnan: Yes, I do believe, and I am talking specifically in terms of the concept of co-operation with regard to this amendment and every other amendment that comes before this committee. The way we as New Democrats like to approach our job as a part of the democratic partnership in the delivery of good legislation for Ontario is to say: "Let's work together to get the best possible wording on this legislation." Again and again, we have to say to the people who are watching now that the New Democrats are opposed to the legislation in principle.

The Vice-Chairman: Mr. Farnan, I am going to interrupt again. I think we accept the premise that the purpose of these committees, particularly clause by clause, is to try to draft the best legislation for the province. I would ask you to restrict your comments to the amendment which has been moved.

Mr. Farnan: I thank you for that view you share. I share it and my colleagues share it; the real question is whether the government members on the committee share that commitment to a co-operative approach to finding the best possible legislation. I would say to you that there will be a litmus test very shortly, as we look—

The Vice-Chairman: Mr. Farnan, I am going to rule you out of order unless you address the four corners of this particular amendment.

Mr. Farnan: As we look at this particular amendment, as we deliberate this amendment and as we vote on this amendment, there will be a litmus test in which the people of Ontario will examine the way the government members on this committee vote. They are going to say to themselves: "Here is an amendment that actually makes sense. It makes the punishment fit the crime. It offers an opportunity for the municipalities to work through your legislation in a way that would make it palatable for them." If this government is saying, "No, you will only get this legislation the way we want to hand it down," not with the reasonable kinds of amendments being put forward by the opposition parties, both the Conservatives and the New Democrats—this is a litmus test of co-operation. I sincerely hope the government does not fail this test as it has failed the test of so many amendments which have come before this committee already.

The Vice-Chairman: The only name I have for additional discussion on this particular motion is Mr. Philip.

Mr. Philip: As we went around the province, the government members, or more particularly Mr. Kanter, would say to the media and indeed to the people who came before us: "No, we're not prepared to remove the municipal option, but we are prepared to listen to your ideas to try to improve the bill. No, the municipal option is the principle of the bill, but we are prepared to listen to ideas. What kind of ideas do you have to improve the bill?"

In the questioning of people who came before the committee, invariably two out of every three, I would say, in response to questions would say: "We think the present law is not strict enough, that it is a licence for people to

simply break the law. The larger the retailer, the more financially advantageous it is to break the law, because the fines are so insufficient that they're simply like paying a parking ticket to the average person."

We tried to say there should be a set of minimum fines, then, similar to any other municipal bylaws where a municipality, if it is going to have that power also has the power to set certain kinds of fines. The government rejected that. Instead, what we have in this section by Mr. Kanter is a guideline that says somebody can break the law, but no matter how big that person is, the maximum fine is going to be \$50,000. That sends out a message to the judges across the province which says you can have the largest retailer committing an offence over and over again and the most he can pay is \$50,000.

Of course, with the most, you also have the sliding scale, which means very little to the person who commits the offence if he happens to be a small small person or indeed a first or second offender.

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What Mr. Kanter also said to each of these groups then is, "Give us your ideas on how we can improve the bill." The Canadian Federation of Independent Grocers, which does understand that business and which understands what is going on in that business, said the fine should be 100 per cent of gross sales earned on the day of the offence plus an additional \$1,000. That is basically what Mr. Pope is recommending. It is not quite as tough as what they did. He leaves off the \$1,000.

REAL Women of Canada, appearing before the committee, said to amend it by providing for an additional penalty equal to the amount of gross revenues earned on the day of the offence. Essentially, they are asking for the same thing as this amendment.

The township of Oro said to increase fines to 10 times gross sales on the day of violation. They were perhaps a lot more draconian in what they asked for certainly than Mr. Pope is, but the essential theme of theirs was, "Make sure that you have a tough penalty."

People for Sunday Association of Canada said to amend to provide a minimum fine sufficient to act as a deterrent rather than a licence to violate. Again, the theme there is, "Make sure that the fine is adequate."

The Church of Jesus Christ of Latter-Day Saints, appearing before the committee, said to increase fines and impose jail terms for repeat offenders of current legislation. This amendment does not go that far, but it does at least accept the premise again that runs through their presentation, which is that fines have to be sufficient to deter.

The United Steelworkers of America, Local 8995, said the law should provide jail terms for those retailers who publicly declare that they will defy the legislation. That goes a little bit further, but it is also dealing with a different offence. It is dealing not just with an offence in terms of breaking this individual statute, but also going further than that to publicity and, in fact, counselling others to break the law as well. So they have asked for tougher sentences.

The Pentecostal Assemblies of Canada said that it should be amended so that municipalities will not have the authority to reduce the maximum fine. Essentially, in Mr. Kanter's amendment, what you are doing is setting out a

guideline that says, "Have any fine you want, but make sure that it does not go over \$50,000." So that is essentially getting the message out that the municipalities can, through instructions to their lawyers who are pursuing the matter before the courts, go lightly or not demand a tough sentence, or through their own bylaws, end up having a fine that is very small as long as the maximum is not \$50,000—as long as they do not come in with a fine above \$50,000.

The Retail Council of Canada said a formula which takes into account the economic advantage derived from opening in violation of the law should be used in determining the amount of the fine. In other words, the more money you take in at the gate, the more money you pay out on the fine. The bigger you are, the bigger the offence. The more you stand to gain by your offence, the more you should pay. That is essentially what this amendment by Mr. Pope does.

The Malchem Group said that consideration should be given to the gross profit for the day, the number of employees working and the size of the establishment. That might be very complicated to try to work out, but it is essentially arguing for some variation of an amendment that would say that the big guys are going to be penalized more than the small guys. That again is what Mr. Pope's amendment is trying to do.

What we are doing with the \$50,000 is simply sending out a signal that you can break the law, you do not have to have respect for the law, you can break it as many times as you want, and no matter what happens, you are only going to end up paying a maximum of \$50,000 plus whatever your legal costs are, which would probably be fairly minimal at this level of prosecution.

What Mr. Pope's amendment is doing is sending out a guideline that says if you break the law, you may well be fined up to your total gross profits for the day, which will really hurt you, and it will hurt you proportionally to the size of your operation. I think that is a fairer kind of process.

The other thing it does is that it essentially gets at the shopping centres, which in turn base their rent not just on per square foot but also on the gross revenue that comes in in a day. So it is in keeping with that as well.

I suggest if the Liberal members are serious, if they are saying they are setting up some kind of provincial law that will work better, if they are saying there is a provincial law and not simply that they are abrogating their responsibilities to the municipalities, then they can at least set some guidelines for those municipalities, and they do not have to be soft on those who turn their noses up at the laws of this province or the laws of the duly elected representatives in the municipalities.

If the Liberals want to be soft on those who violate the law, who think they can second-guess parliament, who think they can second-guess the elected representatives, who think they can create a laissez-faire, anarchistic sort of system where it is every man for himself and you just say to politicians, "We do not care what you feel is important for the common good, we are going to do whatever is in the best interests of our business and to hell with you," then of course you will defeat this motion.

Ms. Collins: You are on daytime television.

Mr. Philip: I do not know when these are rebroadcast. It is some time on Friday. I rarely get to watch them because on Friday I am going out

into my constituency. I will be dropping around to O. Ferlisi Supermarket on Albion Road in my riding tomorrow. They very much want to see tough fines. They very much do not want to see this bill passed in the first place.

Mr. Ballinger: If they have a special on this week, why do you not tell us what the special is?

Mr. Dietsch: I bet Mr. Pope is out there getting it right now.

Mr. Philip: The special this week is that they really care about their employees. That is the special they always have every week. Their employees really care about the family that owns those three grocery stores and they care about their Sundays. That is why they feel so strongly against this bill. It is the same kind of sentiment that is found in all the grocery stores in my area: Valencia Foods, Miracle Food Mart, Safeway. No, Safeway is not in my area, but it is near.

Mr. Dietsch: I am really interested in the grocery stores in his riding.

The Vice-Chairman: Could we cut out the crossfire, please?

Mr. Philip: If the members want to interrupt me, I will be happy to respond to their questions. If they would like to address themselves to the specific content of my amendment, I will be happy to answer those questions, which I think are more appropriate.

The Vice-Chairman: Mr. Philip, I would like to ask you to return to the debate on the specific motion.

Mr. Philip: That is what I am asking the members of the Liberal Party to do. I am saying that if they will stop interrupting me with superfluous, irrelevant comments and will address themselves to matters of the substance of this amendment, I would be happy to give them arguments. They have not listened to the presentations that have been made, all of the ones that I have just reminded them of in those eight weeks of public hearings; I do not expect that they want to listen to me now. None the less, for the sake of those people that did make serious presentations, I think that they have a right to have their arguments put forward. That is what I have tried to do. Indeed, I think that is what the amendment I am arguing for is trying to do.

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If the members of the Liberal Party would like to argue against the amendment or against any of the arguments that these groups have presented to them when they were in the various communities and heard these arguments, then I would be happy to have a debate on that, rather than on how many stores I happen to have in my riding.

Mr. Dietsch: I think the sad point is that Mr. Pope is missing your very valid points.

The Vice-Chairman: Order to the meeting. Mr. Philip, I would ask you to please refrain from responding and we will try to get the discussion back on track.

Mr. Philip: I just want to point out to you what the Speaker did point out to the Attorney General (Mr. Scott) the other day, which is that in

most parliaments it is considered against the rules to point out the absence of a member. Members can be absent for a number of reasons. I have no idea why Mr. Pope or his Conservative colleagues are not here. I understand that Mr. Pope had a meeting. I recognize that in this parliament we have not followed that rule; it might be a good idea because each and every one of us, examining our own situation, knows that there are reasons why we might not be able to be here on a particular day.

I can recall one occasion where some comment was made about a member who was not present and in fact he was attending a funeral of a close relative of his. It was quite embarrassing. Mr. Pope may be attending a very important meeting for his constituents. The Conservative members on this committee do not tell me why they are present or why they are not present, but I think that it is more important that the members address themselves to the amendment which Mr. Pope has moved, originally to my amendment but now to Mr. Kanter's motion, rather than deal with why Mr. Pope is or is not here.

The Vice-Chairman: Is there any further debate on the motion?

Mr. Kormos: If I may. I understand that I am not a member of this committee, but I understand similarly that I am entitled to speak with respect to these matters.

The Vice-Chairman: Absolutely, please speak.

Mr. Dietsch: A breath of fresh air.

Mr. Kanter: Let's hear what he has to say.

Mr. Kormos: Thank you very much. Listen carefully, please, because there is a consideration here of subsection 7(3) which is not removed from this particular amendment. The reason why I have, quite frankly, in reading this, some concern about subsection 7(3) is because it does not make reference to a fine under the statute or a fine that would be reportedly, by virtue of the municipal bylaw—

The Vice-Chairman: What is the substance of subsection 7(3) that you are referring to, Mr. Kormos?

Mr. Kormos: Well, subsection 7(3) indicates that "In determining the amount of the fine, the court shall take into consideration any evidence respecting the gross sales in the retail business establishment on the holiday on which the contravention occurred." I have some concern, because it does not indicate whether subsection 7(3) is applicable to both subsections 7(1) and 7(2). That obviously could and should be remedied by way of some fine-tuning.

Mr. Philip: That is what we have tried to do.

Mr. Kormos: But it remains that subsection 7(3) specifically directs a sentencing judge or justice of the peace to address his mind to quantum of sales, to gross sales. Yet, with a ceiling as proposed in the amendment to subsection 7(2), that puts a sentencing judge or justice of the peace in the dilemma of having to consider gross sales.

Let us say we have two offenders, one subsequent to the other, one with gross sales of let's say \$100,000; the sentencing judge or justice of the peace has to take that into consideration because it says "shall". He may well say to himself, with respect to the first offender, that gross sales of

\$100,000 placed this offender at the top range. That is to say, it warrants a penalty that is a maximum penalty. What does he do then with the subsequent offender who comes before him pleading guilty or being found guilty, who has gross sales of \$200,000? By virtue of the amendment to subsection 2 of the proposed amendment, without the amendment to the amendment, the sentencing judge then is hamstrung in terms of having regarded the first as a maximum worst-case scenario, one in which the maximum penalty is required. The second offender is before him; he is obviously twice as bad as the prior offender, but he is hamstrung by virtue of the ceiling that is imposed now, rather than the ceiling that is contained in the Pope amendment, which would permit him to give real effect to subsection 3.

Frankly, without the amendment to the amendment to subsection 2, subsection 3 becomes quite meaningless. It is there but it is not a very effective or a very strong guideline, and indeed, if it is a guideline, it is very limited in its scope.

As most, if not all, of the people here know, part of the principles of sentencing is that the maximum sentence is to be allocated to the worst offender. But if the maximum sentence has, in this case, such a limited scope, and when offenders come one after the other—they do not come on a parallel or plain basis so that they are all viewed at the same time and can be put on a scale of one to ten, but they come sequentially—how then does a judge address the matter of the maximum sentence for the worst offender?

Quite frankly, I have some concern because the amendment does not contain a minimum. We also know that, especially under provincial offences legislation, which is where prosecutions under this statute, be it bylaw or statute, are going to take place—

Mr. Philip: Minimum was defeated.

Mr. Kormos: They are Provincial Offences Act prosecutions. We all know that section 60 provides for basically overturning or getting around the matter of minimum penalty, but the fact that there is no minimum penalty also causes me some concern. I appreciate that it was defeated some time ago by this committee, but it causes some concern because it indicates that there is such a broad scope on the bottom end—there are really no guidelines to a sentencing judge or a justice of the peace on the bottom end—but there are some very limiting guidelines in terms of sentencing at the top end.

As I say, a consideration of subsection 3 should lead this committee into regarding this amendment as a natural amendment. The very fact that subsection 3 was included in the legislation calls out for the amendment that is being proposed now.

I appreciate that I was very lengthy, but I am new at this. I address that in absolute sincerity. I really see a problem with subsection 3 in terms of not adopting or accepting this amendment.

Mr. Philip: That was the shortest speech I have ever seen a lawyer give.

Mr. Dietsch: Wait until you get the bill.

The Vice-Chairman: Is there any other debate on Mr. Pope's motion?

Mr. Philip: I would like to hear Mr. Kanter's comments.

The Vice-Chairman: Well, I am asking for further debate on the motion. Is there any further debate on the motion? If there is no further debate on the motion, we will have a vote. Does the committee wish a recorded vote?

Mr. Philip: Yes. Since the Conservative members are not present, I think since it is their amendment, it is only fair that they be told that the vote is being taken. So we will ask for the customary—

The Vice-Chairman: I agree. The customary time is 20 minutes, I believe, so we will have the vote in 20 minutes. We will adjourn until then.

Mr. Dietsch: Just before you adjourn, I would like to ask for clarification from a new member's perspective. I do not quite understand where you draw a parallel and criticize someone for making reference to people being absent, yet it is okay to make reference to people being absent when you are requesting a vote. I do not quite understand that. None the less, we will let it go by at this particular time.

The Vice-Chairman: I suggest that the debate on that issue be a private debate between the two members. It is really not of concern to the committee at this particular point.

Mr. Dietsch: Actually, Mr. Chairman, I am directing my comments right to you, through to the chair.

Mr. Philip: I would be happy to respond to that. The reason is fairly simple.

The Vice-Chairman: I want to restrict the debate on this.

Mr. Philip: I did not want those who were viewing thinking that I was asking for a 20-minute recess simply as a delaying mechanism. There are reasons, the reasons being that the mover of the amendment—and I did not name him—did not happen to be present and he should be here to vote on his own amendment. I think that is different from saying that member X is not here.

Mr. Dietsch: I think it is fair to say that the meeting was 40 minutes late in starting, in reference to that as well.

The Vice-Chairman: There is a standing provision that when a vote is called, any member of the committee can ask for the 20 minutes. That has been asked for. It has been dealt with. We are adjourning for a period of 20 minutes and we will call the vote at that time.

The committee recessed at 4:50 p.m.

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The Vice-Chairman: I will call the committee to order. The 20 minutes have transpired and we are now going to call the vote. Is it the wish to have a recorded vote?

Mr. Philip: No, not necessarily.

The Vice-Chairman: All those in favour of the motion? All those opposed? The motion is defeated.

There being no further amendments to Mr. Kanter's motion, we will now deal with Mr. Kanter's motion.

Mr. Kanter moves that subsection 7(2) of the act, as set out in section 6 of the bill, be struck out and the following substituted therefor:

"(2) A bylaw under subsection 4(1) requiring a retail business establishment to be closed on a holiday shall provide that any person who contravenes the bylaw is guilty of an offence and on conviction is liable to a fine of not more than \$50,000."

Is there any debate on Mr. Kanter's motion?

Mr. Philip: I want to ask Mr. Kanter some questions on this. Why is he intent on limiting the amount of the fine? Can he not envisage that to a very large corporation a \$50,000 fine would be of little consequence?

Mr. Kanter: This would be consistent with the fine for a violation of the provincial framework, which was set at \$50,000, and I believe that section was adopted by this committee.

Mr. Philip: If \$50,000 is inappropriate here, of course you can amend \$50,000 in the other section. Therefore, the question is equally valid. Why is it that he wishes to protect a large corporation which insists on violating the law of the land, be it a provincial or a municipal law, by seeing to it that it is not fined more than \$50,000? Why do you want to give them that kind of protection and not trust the discretion of the court?

Mr. Kanter: As we indicated in previous debate on this section, which has been quite extensive, this section together with section 8 is a very substantial strengthening of the enforcement provisions of the Retail Business Holidays Act. The combination not only of a fine which is five times greater but also the other provisions—the provisions by which evidence, where available, of gross sales shall be taken into account; the injunctive relief; the possibility of using signs or advertisements as evidence—together make the act much tougher and much more enforceable.

It is interesting, if you will recall the many briefs we heard, that the vast majority of briefs, regardless of their position on the local option, supported tougher enforcement provisions as proposed by the bill. What our motion does is to make more consistent the maximum fine for the breach of a municipal regulation should a municipality wish to vary or derogate from the provincial framework.

I would remind Mr. Philip and other members of the committee that the vast majority of briefs before this committee supported our stronger enforcement measures as they were proposed. What we are doing with the amendment to subsection 7(2) of the act which is before us is strengthening even further, even beyond that which most groups supported.

Mr. Chairman, while I have the floor in answer to the question by Mr. Philip, I might note one other aspect of the legislation that has come under some discussion, and that is the question of those who counsel others to break the law. I recall that Mr. Scott some time ago introduced a bill—I believe it was Bill 184—that contained some provisions that would make it an offence for a person carrying on a retail business or acting on behalf of such a person to counsel or require any person to contravene Sunday legislation. Mr. Pope gave notice to this committee—I am not sure whether he formally moved a motion or

not; I have a motion that might reflect the type of motion that he intended to move—that reflected the sentiments of Mr. Scott and it is, perhaps, slightly broader.

The Vice-Chairman: Mr. Kanter, are you suggesting that you are moving an amendment to your own motion?

Mr. Kanter: I am not moving an amendment. I am trying to answer Mr. Philip's question broadly, if I might, Mr. Chairman. I appreciate that distinction, having tried to draw your attention to those who go beyond the motion. I was just trying to point out to Mr. Philip that we feel that the amendment to subsection 7(2), which is now before the committee, strengthens the enforcement provisions of the bill even further, that the enforcement provisions of this bill are much stronger than those of the current Retail Business Holidays Act and, thirdly, if I might with your indulgence, Mr. Chair, that if Mr. Pope or others wish to move amendments relating to those who counsel or coerce people into breaking this law, that is certainly something that we would consider to be consistent with the spirit of the amendments to Retail Business Holidays Act that we are moving.

The Vice-Chairman: Is there any further debate on Mr. Kanter's motion?

Mr. Philip: I still have not heard an argument from Mr. Kanter as to what appears to be a contradiction. Under subsection 7(2), his amendment, then, he is setting a cap. Then, in subsection 7(3), he is providing guidelines that say that he shall take into consideration any evidence respecting the gross sales.

It seems to me, then, that what you are doing is setting a cap, if you want, on the discretion given in subsection 7(3) by introducing your amendment in subsection 7(2); is that not the case?

Mr. Kanter: The discretion to the request to take into consideration any evidence would apply both to a violation of the provincial law or a violation of a municipal bylaw. Mr. Ritchie previously suggested some reasons why gross sales, while desirable evidence to obtain, are difficult evidence to obtain, and that is the one of the reasons why we did not support the previous amendment. There is some difficulty in obtaining evidence of gross sales and there might be a situation where there was no evidence of gross sales, yet if it were a very large operation such as a large department store that was repeatedly opened, the judge or the justice of the peace might want to impose a very substantial fine indeed, even though there was no evidence of gross sales. Where available, we think it would be important to take it into consideration.

Mr. Philip: Well, can Mr. Kanter give us an example or a scenario of any case in which somebody would be so stupid as to stay open and not have some gross sales that His Honour could take into account?

Mr. Kanter: I do not think it is a question of staying open and not having gross sales. I think there is a question of gathering evidence, of the resources required to do that and the procedures required to do that. I think if you want to go further into the issue of the evidence required and police procedures, it might be more appropriate to address some of your questions to Mr. Spring of our legal staff.

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Mr. Philip: But the parliamentary assistant to the minister is making the argument that it may be difficult to obtain gross sales and therefore one of his arguments against the previous amendment, in fact, the only argument that I can think of, was that it would be too difficult to obtain. Then my question is this: if it is too difficult to ascertain, then why is it inserted into subsection 7(3) of the bill? I mean surely if it is too difficult to obtain, then it is too difficult for the judge to take it into consideration.

Mr. Kanter: But it is my understanding that we are considering subsection 7(2) and we are requesting this committee to amend the legislation so that it is clear that if a municipality chooses to derogate from the provincial framework, there is still a maximum fine of \$50,000. There was some concern expressed by some groups that Mr. Philip quoted, and some others, that without this amendment it was possible that the municipality might act to gut the bill by reducing the maximum fine in that municipality to a nominal amount of \$1 or \$2.

We are, in fact, plugging that possibility, remote though it may have been. We are strengthening the enforcement provisions, both with respect to maximum fines and other provisions. The court is specifically directed that it is mandatory that when evidence respecting gross sales is available, it shall be taken into account. I was simply pointing out and really repeating the information offered by Mr. Ritchie who has had considerable experience in this regard that it is often difficult to obtain evidence with respect to gross sales.

Mr. Philip: With respect to Mr. Kanter's statement, the groups that appeared before us were arguing that a municipality could lower the fine. At that point they were arguing for minimum fines, which are the amendments that the Liberal members have voted down. They were not arguing for a maximum fine. To somehow suggest that that is what they arguing is simply a misrepresentation of their views.

I think, no doubt, that some of these groups are watching these proceedings on TV. I hope that they will make their comments noted to Mr. Kanter, since I think that perhaps by accident or lack of comprehension he has misrepresented their position. With regard to the fact that we are dealing with the subsection 7(2) amendment, does Mr. Kanter not agree that subsection 7(2) puts a cap on subsection 7(3)? Is that not the case?

Mr. Kanter: Subsection 7(2) deals in a consistent manner so that whether a person breaches the provincial Sunday closing legislation or a municipal regulation, that person will be subject to the same \$50,000 maximum fine—a maximum fine which is five times greater than the fine in the current Retail Business Holidays Act, which I believe Mr. Philip and many other people have complained is inadequate.

Mr. Philip: I accept that subsection 7(3) relates to both the provincial and the municipal bylaw. That was not my question. My question to Mr. Kanter is: in the way in which this is written, does subsection 7(2), which he is moving, not put a cap on subsection 7(3)?

Mr. Kanter: My answer is yes.

Mr. Philip: The judge can consider the gross sales as much as wants, but the maximum fine he can levy is \$50,000?

Mr. Kanter: Yes.

Mr. Philip: I would try to bring at least a bridging of those by moving an amendment. Maybe if I can explain the content of my amendment to Mr. Kanter, then we can have legislative draftspeople work on it. But it would seem to me that it would make much more sense if it read, "The maximum fine shall be \$50,000 or the gross sales." That would allow the judge more discretion in looking at a habitual offender which was a large corporation and which simply flouted the law.

It seems to me that if Mr. Kanter really was listening to all the various groups whose views I reminded him of earlier, that kind of amendment would be acceptable. It would give the judge the discretion to cap it at \$50,000—therefore, there is a suggestion there—or gross sales. The judge then could decide whether the gross sales were obtainable in a useful form. I ask Mr. Kanter if he would consider that type of amendment.

Mr. Kanter: I think that type of amendment is subject to the same problems I have been speaking of; the fact that the evidence respecting gross sales is rarely available. Where it is, it shall be taken into consideration. Perhaps, also, Mr. Philip has forgotten, perhaps inadvertently, the fact that convictions can be sought each and every time a store is open, each and every Sunday or holiday, so that the cumulative amount of a fine could be many times the \$50,000 figure.

It is also my understanding that setting the maximum fine five times higher than under the previous legislation will send a very clear signal; which is what we are attempting to do, to the members of the judiciary who are hearing these things that this is a matter which should be taken much more seriously than under the previous legislation.

Mr. Philip: Does Mr. Kanter not agree that you could have that repeat offender appearing before a justice of the peace who might decide that a \$1,000 fine every time he violates would be appropriate and that there is absolutely nothing which prevents him from doing so? The repeat offender appearing before one judge might well see that \$50,000 as simply something which is there which he does not have to worry about because, after all, experience has taught him that every time he appears before that JP he gets a \$1,000 fine.

Mr. Kanter: It is possible but not likely. I believe that most judicial officers have some cognizance of the fact that repeated offences should warrant higher fines. Second, it is my understanding that should a minimal fine be imposed for a repeat offence, it would be appealable by the crown. Perhaps we should get confirmation of this from our legal counsel, but it would be my understanding that the amount of the fine could be appealed.

Mr. Philip: If the justices have that cognizance Mr. Kanter talks about, why not give them the discretion to deal with that particular offender who is a habitual lawbreaker and give a fine larger than the \$50,000, or indeed, in the case of a small businessman who is a habitual offender, perhaps a fine equal to his gross sales, which may be less than the \$50,000? Would it not be appropriate, since the justices, as he says, would take into account the repeat offender or the particularly offensive and arrogant lawbreaker, to give them more discretion and not limit it, as is being done in this amendment?

It seems ludicrous to give them discretion in subsection 7(3) and then say, "Well, you do not really have that discretion because we are going to limit you by this amendment in subsection 7(2)."

The Vice-Chairman: Mr. Kanter, before you respond to the question, and I will let you respond in a minute, I will just bring to Mr. Philip's attention that we have been having a very useful exchange and Mr. Kormos has indicated that he would like to participate in the exchange, so perhaps in the next question or two you might want to yield to your colleague Mr. Kormos.

Mr. Philip: I will yield to my colleague now, after Mr. Kanter answers that question.

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Mr. Kanter: I do not believe there is any problem at all with the small offender in terms of taking the evidence respecting the gross sales into account, up to the point of \$50,000. I did not understand that question with respect to the larger operation. It is our view that we are giving discretion appropriate to judicial officials to make a decision. We are giving them a maximum fine figure, which is five times greater than the current amount and, in addition, we are directing them to take any evidence respecting the gross sales into account.

It is my understanding that it is not easy. It is not the usual practice of police forces to gather this information. However, should it be available it must be taken into account. It is our view that that is appropriate authority to give to judicial people. This is the kind of thing they do all the time, determining the amounts of fines.

Mr. Kormos: The objection by Mr. Kanter seems to be about the difficulty encountered by the police in acquiring that evidence. But it would seem to me that would be an integral part of any investigation into a violation of either the old act or this proposed legislation, because surely a part of the whole investigation would be to determine whether it was a matter of selling five candy bars or 20 fur coats, and the degree of involvement in the trade.

Subsection 7(3) makes it mandatory. There is no discretion there, because it makes it mandatory for a sentencing judge or justice of the peace to take into consideration—interestingly, it says "any evidence." That is not germane to what is being discussed here, but that is of some concern because, quite frankly, any evidence may not be admissible even for the purposes of sentencing, notwithstanding the wording of subsection 7(3).

Be that as it may, if the concern about using gross sales as a ceiling for fines is based on the difficulty in acquiring that evidence, what Mr. Philip proposes is the ideal resolution because what it says, basically, is that if evidence of gross sales is available and, of course, is provable, then that ought to be used as an indicator for the sentencing judge in compliance, among other things, with subsection 7(3). If it is not, then adopt the arbitrary and artificial figure that is proposed, of \$50,000.

That seems to be so simple. It is not a matter of giving a judge discretion to opt for one or the other. It is a matter of saying we will accept, in the event that gross sales cannot be proven, that there is going to be a deemed \$50,000 ceiling as if that were gross sales because that is what subsection 7(3) refers to, and that is what the amendment to the amendment refers to. So this would seem to be the ideal resolution. It would resolve the conflict of Mr. Kanter, because the only real argument he has raised about using gross sales is the difficulty in acquiring those figures. So, then, create a hybrid scenario wherein the maximum fine shall be either \$50,000 or an amount equivalent to gross sales, whichever is the greater.

The Vice-Chairman: I am going to try to bring this matter to a head in the procedural sense. We are discussing a hypothetical amendment to Mr. Kanter's motion. Mr. Kanter's motion is on the floor. It is the motion being debated. There was a suggestion by Mr. Philip that perhaps there might be a useful amendment to this motion. So, at this particular point in time, I would ask Mr. Philip or Mr. Kormos to either present an amendment, or we will have to return to debate the motion of Mr. Kanter. I would ask Mr. Kormos or Mr. Philip whether they are prepared to present an amendment to the motion.

Mr. Philip moves that the proposed subsection 7(2) of the act as set out in Mr. Kanter's motion be amended by striking out "a fine of not more than \$50,000..." and inserting in lieu thereof "a fine of not more than the greater of,

(a) \$50,000; and

(b) the gross sales of the retail business establishment on the day on which the contravention occurred."

Mr. Philip: That gives the judge the discretion to impose the higher one.

The Vice-Chairman: Thank you, Mr. Philip. We have already had a good portion of the debate on the motion to amend as just placed. Is there any further debate on the amendment?

Mr. Philip: I think members should have the amendment before them at least before we vote on it.

The Vice-Chairman: Is there any confusion or need to have it before you? I think the members understand the gist of it and we can continue debate pending production of a written copy of the amendment.

Mr. Philip: It will only take e two minutes to get the amendment reproduced.

Mr. Pope: Can I just have one question on that? Are you saying the maximum being the greater of \$50,000 or the gross sales?

Mr. Philip: Yes.

The Vice-Chairman: Wording it in that fashion still would probably require a judge to do the gross sales bit. I wonder if perhaps to eliminate that it might say that the judge has a discretion to pick one or the other.

Mr. Kormos: But he has to consider gross sales in any event pursuant to subsection 7(3). That has to be put before him, because it says he "shall take into consideration any evidence." There is not a standard of evidence created there. It says "any evidence."

The Vice-Chairman: I am just thinking, in terms of clarification so that confusion does not exist, that perhaps it might not be best to have it in the discretion of the judge; so that the judge can determine whether the evidence of gross sales would be too difficult to obtain or for whatever reason would prefer not to pursue that particular avenue and just go with the \$50,000 maximum.

Mr. Kormos: But that will give a judge the option to opt for \$50,000, when indeed there may be evidence of sales in excess of \$50,000.

The Vice-Chairman: I am not trying to debate the issue as chairman, I am simply trying to clarify the amendment.

Mr. Philip: Under this, the judge has a discretion up to the \$50,000 anyway. Even in that discretion up to the \$50,000 under the present one, he still has to take into account the gross sales. All this is doing is giving him the added discretion that he in fact can fine the amount but not higher than the gross sales. As much as we do not like the cap, we at least would prefer this cap to the one which the government prefers.

The Vice-Chairman: Just to be clear: Again, as chairman I do not want to debate the motion, but as I see it, if we look at the preliminary wording, halfway through subsection 7(2) it indicates "shall provide" and then it would go on to read "a fine of not more than the greater of,

"(a) \$50,000; and

"(b) the gross sales of the retail business establishment...."

As I read that, it would mean there is an absolute onus on a judge to obtain the gross sales figure and that the judge would not have the option. He would simply have to go with the larger, but he would be required to see whether the gross sales would be the larger.

Mr. Philip: But he has to do that under subsection 7(3) anyway.

The Vice-Chairman: Subsection 7(3) indicates "shall take into consideration any evidence respecting." There may or may not be evidence; that is the only point. Again, I would throw the issue back to the committee. As chairman, I do not want to debate the issue. I just wanted to raise that particular apparent concern. I will open it for debate.

Mr. Philip: In response to your question, the crown surely would present the evidence, as it is required under subsection 7(3). It is the crown's task to go in and obtain that evidence of what the gross sales are, because it is not a discretion under subsection 7(3). If subsection 7(3) were discretionary, I think you might have an argument, but it is not. Subsection 7(3) clearly says the judge has to take that into account. One would think then that the onus would be on the judge, if the crown had not presented the evidence, to seek ways of finding out what the gross sales were before making these judgements. I am not a lawyer, but Mr. Kormos has more experience—

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The Vice-Chairman: Perhaps some questions could be placed to Mr. Spring to see whether or not he would have any preliminary indication on the wording of the motion to amend.

Mr. Kanter: Either Mr. Spring or possibly legislative counsel, in order, might be useful, Mr. Chairman.

The Vice-Chairman: Mr. Spring.

Mr. Spring: Mr. Chairman, I am going to sound a little repetitious, I am afraid. Subsection 7(3) obliges the court to "take into consideration any evidence respecting the gross sales" where that exists. In fact, that evidence may not exist and it has been my experience in provincial court that judges will not interrupt proceedings and order a continuation of an investigation in

order to get certain evidence. As originally contemplated, I believe the section was there to mandate that the court should take into consideration any evidence respecting gross sales where that evidence exists. It can exist in a couple of ways. I can think of three offhand.

The first is the obvious one where the evidence is obtained by means of a search warrant. I would like to suggest that it is not in every police investigation under the Retail Business Holidays Act that search warrants are employed. In fact, they are employed very rarely although they have been employed. Secondly, the owner of the business or an officer of the business may find himself in the witness stand being cross-examined with respect to this particular issue and the evidence may be forthcoming there. Thirdly, and perhaps less likely, the police surveillance of the business may offer up some evidence: "there were a lot of coats sold on that day." I am really not sure that that is evidence of anything, quite frankly.

My concern would be that the court not be forced into the position of having to undertake an examination or an interrogatory by itself to try and find the gross sales where evidence has not been forthcoming, either from the crown or from the defence in cross-examination. From a legal point of view, if it is to be decided that evidence of gross sales is not to be brought forward, then the court should not be obligated to seek it by itself.

The Vice-Chairman: Mr. Spring, that is very instructive with respect to subsection 7(3). Have you had sufficient time to relate that subsection to the motion to amend?

Mr. Spring: I am looking at the motion to amend, Mr Chairman. I cannot make up my mind at the moment whether the wording of the motion to amend would obligate the court to seek out evidence of gross sales in order to satisfy itself as to what the maximum penalty to be imposed for that particular violation would be. I have to, I think in this particular case, defer to legislative counsel. I have not had time to consider and I would need more time to consider as to whether or not the proposed amendment obligates a court to do something which it otherwise would not be—

The Vice-Chairman: But if that obligation existed, would it be in contradiction to subsection 7(3), where one is an obligation and one is not necessarily an obligation?

Mr. Spring: It would in my view be a contradiction to the extent that it would be obliging the court to do something that the court is under no obligation to do under subsection 7(3).

The Vice-Chairman: And if, in the motion to amend, a judge had the discretion to either impose one maximum or the other, would that then be compatible with subsection 7(3)?

Mr. Spring: Yes, I believe it would.

The Vice-Chairman: Thank you. Mr. Philip, you had a question.

Mr. Philip: You have presented three scenarios as to how the evidence concerning gross sales might be obtained. One is the warrant, another is police observation and the third is cross-examination. I am not a lawyer, so maybe you can help me with this. Can you, with your experience in the court, tell me any case where a crown attorney exercising his responsibility in pursuing this type of case, either under subsection 3 as it now exists in

section 7 of the bill or under my amendment, would not cross-examine the defendant and ask him to produce evidence concerning his gross sales on the day in question?

Mr. Spring: We have to assume, for purposes of my answering your question, that the defendant or an agent thereof is in the box. I expect that if he did take the stand, yes, the crown attorney would cross-examine him if the crown attorney were of the view that the answers he would elicit from the defendant or its agent would reveal a fairly substantial gross sales sum.

Mr. Philip: Is it not true that if the answers were not satisfactory to the crown, the crown could ask and the judge would comply with the request that he produce evidence to substantiate his statement regarding gross sales? Would you agree with this; that if I were the defendant, it would be an unacceptable answer to either the court or the prosecuting attorney to simply say, "I don't know how much my gross sales were on the day on which I stayed open against the law"?

Mr. Spring: That would be the answer the court would have to accept in the absence of further cross-examination by the crown or, in fact, re-examination by defence counsel.

Mr. Philip: And would a normal crown attorney not be able to solicit more information, remembering that the witness is under oath, and actually achieve, perhaps not on the particular day, but at least in further hearing of the court, the gross sales, whether he was pursuing the case under my amendment or under subsection 7(3)?

Mr. Spring: I am getting pretty speculative here. I am a crown law officer. I hesitate to speculate on the abilities of the average crown attorney. It would depend upon the knowledge of the defendant or his agent and the evidence he chooses to give, always having regard that he is under oath. You may presuppose that he has some evidence of gross sales on the day, in fact. On the other hand, he may not. The witnesses who are available may not have that evidence available.

Mr. Philip: Assuming that a statute sends out messages and the message is, first, to the defendant but also to the police and to the crown attorney who is trying to get a conviction against the defendant, do you see any difference in the kinds of questioning that a crown attorney would use under the present act, now subsection 7(3), than under what I am proposing?

Mr. Spring: That is difficult for me to answer, because, as I have said, what you are proposing is not clear in my mind as to whether or not it would obligate a judge to seek out evidence of maximum or evidence of gross sales. In the circumstances, I would have to say, no, I do not see the difference in the line of questioning that a crown attorney might pursue.

I might offer this: The prosecuting crown would, given subsection 7(3), presumably take advantage of any opportunity that was given him to pursue the matter of gross sales if the situation suggested that the gross sales were substantial.

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Mr. Philip: If the defendant were in any way devious in responding to that request for information by the crown under subsection 7(3), would there be any difference in what a court would likely request that person to produce under subsection 7(3) from under what I am proposing?

Mr. Spring: Once you are at the trial stage, it is unlikely the court is going to be requesting the defendant to produce anything. He is there giving evidence, and unless the person giving evidence has been subpoenaed to come and give evidence and bring with him the books of the corporation and other documentation, I do not think the court is really in a position to say: "I'm not satisfied. I want you to go and get something else and bring it here."

Mr. Philip: You are saying that if a defendant under oath simply gave what the judge and the crown would consider to be an obviously frivolous or untruthful statement of gross sales, that court would not in any way follow up to find out exactly whether there was either perjury or an accidental misleading of the court?

Mr. Spring: With perjury, of course, you are into a question of criminal investigation now, quite apart from the administration of this legislation.

Mr. Philip: If the man is obviously lying to the court or if he is giving an answer that is unbelievable concerning his gross sales, would there not be a follow-up by the court in some way?

Mr. Spring: The court would choose to disregard his testimony. I cannot place myself in the position of a judge; I cannot speculate as to what a judge might do in that situation. I think it would be unusual if a judge were to attempt some form of elicitation of further evidence by suggesting the matter be stood down and an investigation commenced.

The Vice-Chairman: But on the wording of this amendment, a judge would be required to look at gross sales rather than having the option to look at that in order to impose a higher fine. In other words, this cannot be read as "a fine of not more than the greater of \$50,000 or the gross sales."

Mr. Spring: Once again, I think I would have to defer to legislative counsel about whether the word "or" would clarify the matter. In my mind, though, it might not clarify the question of whether the judge was obligated, by simply changing "and" to "or."

The Vice-Chairman: I am raising the question as to whether the intention could be that the judge would have a discretion, given the facts in the case, to either simply impose a maximum \$50,000 fine or to pursue the other evidence that may or may not be available.

Mr. Spring: Yes, if that is the scenario you are putting. I am just not satisfied in my own mind, frankly, at this moment, that that is achieved by this proposed amendment.

The Vice-Chairman: The wording of the amendment would have to be changed to do that?

Mr. Spring: As I say, I am not sure.

Mr. Chairman: Is there any further debate on this particular amendment to the motion?

Mr. Kormos: In some respects it seems so simple, and I appreciate that that is so often deceptive, the fact that it seems simple. I appreciate the concern being expressed, but obviously the option here is not that of the judge; the option here is of the investigative personnel and of the

prosecutor. That is to say, if there is no evidence of gross sales, either because it was not obtained by virtue of not choosing to obtain it or by virtue of it being impossible to obtain, or if it was obtained and a prosecutor did not present it before the court, then the judge or justice of the peace does not have to go to a consideration of gross sales for the purpose of determining sentencing ceilings. He lives with the \$50,000 maximum fine.

If evidence of gross sales is satisfactorily put before a sentencing judge or justice of the peace, then he has to determine whether it is in excess of \$50,000. If it is not in excess of \$50,000, once again he is living with the \$50,000 ceiling.

The Vice-Chairman: Are you saying the wording of this amendment gives that either/or situation?

Mr. Kormos: It seems to me it does. Once again, if it does not, I suspect it is merely a matter of fine-tuning for counsel who know about the drafting of this sort of thing. What I am saying is that it seems to be the intent inherent in the proposal by Mr. Philip.

I appreciate the comments about the difficulty of acquiring this type of evidence. Obviously, the most readily obtainable evidence of gross sales is cash register receipts or sales slips which are made out in a book. They have to be numbered or they should be; we all know why that is done.

Once again, if the scenario is one wherein the police or other investigators choose not to collect this sort of evidence, it may well be because they acknowledge the gross sales are going to be so modest that it is not worth the expense, the trouble and the difficulty of collecting that evidence.

The Vice-Chairman: I wonder if it is appropriate at this time, because it is a couple of minutes before six o'clock, that we adjourn the proceedings for today on the understanding that both Mr. Spring and legislative counsel will brief themselves and be ready to further answer questions when we next meet.

Mr. Philip: Let me ask Mr. Spring to consider this question, and he may want to come back with it. If we were to have after "occurred" in my amendment the words "where the evidence is before the court," would that solve the problem?

Mr. Spring: I would certainly like an opportunity in these delicate matters to consider and report back to the committee. I would also like an opportunity to discuss the matter with legislative counsel.

The Vice-Chairman: I would also encourage members to place any questions in advance of the next meeting to Mr. Spring and legislative counsel so they might better prepare themselves when it is time to give their brief.

The committee adjourned at 5:58 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

MONDAY, NOVEMBER 28, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

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Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Hart, Christine E. (York East L) for Mr. McGuinty

Kormos, Peter (Welland-Thorold NDP) for Mr. Farnan

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Hopkins, Laura A., Legislative Counsel

Witness:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, November 28, 1988

The committee met at 3:42 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 6:

Mr. Chairman: I recognize a quorum. I am advised that in my absence you made great progress, but I am advised that Mr. Chiarelli was seeking an opinion from Ms. Hopkins. Has that been given to him?

Clerk of the Committee: Could you just explain the difference between them?

Mr. Chairman: Oh, yes. Before I do that, I should explain that if any members of the committee are seeking interpretation as to wording of amendments, that would be Ms. Hopkins's function. If you are looking for the intent of a particular section, Mr. Spring would be the appropriate person to come forward to give us that, just so you have the distinction between the two legal representatives here. Okay?

Mr. Chiarelli was asking for something in regard to the question of wording, so I will ask Laura if she will explain to him what she was asked.

Ms. Hopkins: The question was about Mr. Philip's motion amending Mr. Kanter's motion, and in particular, we were looking at the reference to the gross sales in the retail business establishment. There was some concern that the motion would force a judge to engage in inquiry to establish the gross sales of the retail business establishment. There was concern that this was going to remove the discretion of the judge in a case.

The motion will not have that effect. This wording will not have that effect. It is up to the prosecution to lead evidence, if it chooses, about gross sales, but the judge will not stop a case in order to obtain that evidence. I want to allay your concern about that.

Mr. Chiarelli: Fine, thank you.

Mr. Chairman: All right. We are still involved with Mr. Philip's motion. Were you speaking to it, Mr. Kormos?

Mr. Kormos: I had been. There is a new draft written that was distributed, and there was some cleanup, as I understand it.

Mr. Chairman: Yes, in clause (b). I think everybody has a copy before him. It now reads, "the gross sales in the retail business establishment on the holiday on which the contravention occurred."

Mr. Kormos: I understand that was designed to make the wording similar to the wording in subsection 7(3). I, quite frankly, am concerned about perhaps even the word "in," as compared to "of," being a less appropriate word. Once again, I would defer to good advice in that regard.

Ms. Hopkins: I do not feel that it makes a substantive difference. Because I do not feel that it makes a substantive difference, if you are more comfortable with the other wording, I am pleased to change it back for you.

Mr. Kormos: Quite frankly, my perspective is that the word "of" is a preferable word as compared to "in."

Mr. Chairman: So rather than "in" it should be "the gross sales of the retail business," but you are content with the rest of it.

Mr. Kormos: It was our motion.

Mr. Chairman: No, I understand there were two words changed.

Mr. Kormos: The word "or" was considered to replace the word "and."

Mr. Chairman: No, "holiday."

Mr. Kormos: Quite right, "holiday."

Mr. Chairman: Are you happy with "holiday"?

Mr. Kormos: Yes.

Mr. Chairman: Okay, so you want "of" instead of "in."

Mr. Kormos: Correct.

Mr. Chairman: I understand legislative counsel indicates that makes no substantive difference. Am I right?

Ms. Hopkins: Yes.

Mr. Chiarelli: Does your motion now still have "and"?

Mr. Chairman: It still has "and."

Mr. Kormos: As I understand it, the word "or" was suggested.

Ms. Hopkins: Not by counsel.

Mr. Kanter: Perhaps it could be suggested in a moment.

Mr. Kormos: It was suggested to me, and I am prepared to have that amended to say "or" rather than "and."

Mr. Chairman: Is there unanimous consent to that friendly amendment? I understand there is unanimous consent. I see everybody moving.

Agreed to.

Mr. Chairman: Was Mr. Kormos the speaker?

Clerk of the Committee: I was not here either, so I do not know who was speaking.

Mr. Chairman: Is there anybody here who knows who was speaking on the last occasion?

Mr. Kanter: My recollection is there was general agreement to send something to legislative counsel to draft, which she has now done. Perhaps, since this is Mr. Kormos's motion, or at least the New Democratic Party motion, he might lead off and then other people might speak to the motion.

Mr. Chairman: All right.

Mr. Kormos: It was discussed in some length before. There was concern about the dual approach to penalty. It would appear now that the seal of approval has been given it, at least by legislative counsel.

As we discussed last time we were here, it does not raise any difficulty in terms of the accumulation or the collection of that evidence, because there is certainly an option. It is not a discretionary option, because it is a simple matter of if the evidence has been collected to establish sales and if it is put before a court. Once again, there is obviously discretion on the part of both the enforcers and the people prosecuting these sorts of things as to what evidence they tender; first, what evidence they collect; second, what evidence they tender. What it does is make it mandatory once the evidence is before the court.

Of course, we all know that there are standards of evidence required before a judge or a justice of the peace can act on them, but if the standard is met, and the standard certainly does not have to be enunciated in the statute, then it is not a matter of discretion on the part of the sentencing tribunal, but it is a matter of its being mandatory for the judge to use one ceiling as compared to another in assessing a fine. Mind you, it still raises a concern as to whether or not there is a minimum penalty, and that was discussed before in a totally different context, as I understand it. It certainly creates a ceiling, it creates a maximum penalty, but it may—

1550

Mr. Chairman: I think we dealt with two motions that were moved earlier that dealt with a minimum penalty, and they were defeated. So we are no longer into the minimum.

Mr. Kormos: I have been made aware of one, and there was a motion made by Mr. Philip on November 8, 1988. As I say, that is a subsequent discussion. It remains that this is an amendment to the amendment. But in the way it was structured, as I say, there was obviously an effort or a desire among some members of the committee to have the amendment of Mr. Kanter, and that was merely replacing subsection 7(2) with a mandatory \$50,000 penalty, rather than giving the municipality— Mind you, that is a little bit bizarre in itself, because there is a delegation of authority to municipalities here, yet at the same time there is some backtracking.

Mr. Kanter's motion in itself is perhaps surprising in that regard, because the delegation of authority to the municipality first of all extended to whether or not they were going to permit Sunday opening and then secondly, to the nature of the penalty that they were going to establish in their municipal bylaw, and whether or not there was even going to be a municipal bylaw controlling the conduct.

It remains that Mr. Philip sought an amendment that would provide ceilings above and beyond the \$50,000 if the scenario warranted it. That motion was not acceptable, but this particular amendment creates almost a hybrid approach.

Mr. Chairman: May I just interrupt for a second? Legislative counsel has drawn to my attention that she wants to speak to you about subsection 7(3) and how that would have to relate to the wording that you prefer, namely "the gross sales of the retail business."

Mr. Kormos: Quite right, and you may recall that just moments ago—that may well have to be considered to be consistent with what is proposed in subsection 7(2).

Mr. Chiarelli: Mr. Chairman, on a point of order: To clarify for purposes of the committee, I believe the motion we are dealing with now is a New Democratic Party motion dealing with the fine provisions relating to a municipal bylaw within the local option. My understanding is that in principle we are relating the same argument to the provincial framework. In the provincial framework law, where there is no bylaw this provision of changing the fine structure would also apply. I am just wondering whether it is the intention of the NDP or Mr. Kormos to move the motion for both instances or whether, on the government side, we would move it for the provincial framework. Are you addressing your debate and your ideas to both the municipal bylaw, the local option and the provincial framework?

Mr. Chairman: He cannot, because he is amending subsection 7(2) which refers to a bylaw.

Mr. Chiarelli: What I am saying is that I think some members of the committee are not prepared to consider this issue unless the whole bill is consistent. It might be useful to the members of the committee to know whether or not the mover of this particular motion is going to make this bill consistent with the other provision which deals with fines in very similar wording.

Mr. Chairman: I know he is moving an amendment to Mr. Kanter's motion, which specifically refers to a bylaw. That clearly states that that is what this amendment is doing.

Mr. Chiarelli: My point is that there is another provision in the bill which relates to the provincial framework dealing with maximum fines. My only suggestion, for the benefit of the chairman and all the members of the committee, is that we have some kind of understanding as to whether or not we are changing the fine structure generally in the bill to relate to both circumstances. Certainly I for one will not consider this particular motion unless I have some indication on the other one.

Mr. Runciman: What other section?

Mr. Kanter: Subsection 7(1).

Mr. Chiarelli: What I am saying is that, in principle, the provincial fine structure and the municipal fine structure should be consistent and the same.

Mr. Chairman: I see what you are saying, but the amendment is really to Mr. Kanter's motion, which is 7(2).

Mr. Chiarelli: That is correct.

Mr. Chairman: What you are asking is, if this passes, is there going to be another amendment, a similar penalty to 7(1)?

Mr. Chiarelli: I am just asking the mover of the motion and the party that moved the motion whether that is their intention or not, because I think it is a significant point.

Mr. Chairman: I think that is a fair point of view.

Mr. Kormos: Sure. I am trying to restrict myself properly to 7(2) and, once again as the chairman pointed out, it was Mr. Kanter's motion to amend 7(2) to provide for a mandatory offence under the municipal bylaw. Once again, that warrants some reflecting, at least, on 7(1). Obviously, 7(1) would have to be made, in my view, and I think everybody would agree, consistent with 7(2).

Then you take that extra step and you query why 7(2) is even there, when at the onset, 7(1) is an offence by virtue of the bill.

As originally drafted, you are telling the municipality that, first, it can permit businesses to be open, in which case 7(1) would not be applicable in any event, because those businesses would be excused. So 7(1) would not create an offence for a business in a municipality that had exercised its power under the bill to permit them to be open for certain days or certain hours.

In the context of this whole thing, and you are relating 7(1) to 7(2), one wonders what the whole purpose is of 7(2). One wonders why a municipality is given a discretion that is not really there, by virtue of dictating set fines—and I am not speaking of the amendment to the amendment but the amendment to 7(2) as proposed by Mr. Kanter—the whole idea of creating, again, no discretion for the municipality, but telling it that once you pass your bylaw permitting openings, by virtue of that, you must create a municipal offence for violating that and you must incorporate penalties that are identical to the penalties created by the province in 7(1).

Of course, as you know, we do not agree with the whole philosophy of the bill, but this is where Mr. Kanter's motion amending 7(2) appears to run contrary to the philosophy of the bill, because there is already a penalty under 7(1). What is happening is that a municipality is not given the option any more of determining whether or not it will have an offence, even, because there is an offence created by 7(1) and now there is a de facto, an automatic offence created by 7(2) upon the municipality initiating its bylaw process.

One of things you are doing—and this will probably all tie in with how certainly I philosophically oppose the whole intent of the act—is putting a heavy onus on the municipality in terms of policing and prosecution, because we all know that municipalities, when they are prosecuting, tend not to avail themselves of the crown attorney's office but use their own enforcement people for the purpose of prosecution.

Be that as it may, there are going to be two offences.

Mind you, what it also raises is the spectre of whether or not a person can legitimately be prosecuted on both, and that is to say under both sections, because bylaws have a totally different purpose and can be seen as

having a different purpose. It is conceivable that a person could be convicted of both, and perhaps that is the intent of the committee, because certainly a prosecution under 1 would not, by virtue of the wording of the statute, bar a prosecution under subsection 2.

1600

As I say, maybe that is the purpose of the committee in entailing both subsections and, of course, if they are both there, they do have to be consistent. I would support any amendment to subsection 7(1) that would make it consistent with subsection 7(2). If the purpose of the committee is to raise the possibility of double prosecutions and double convictions, I would suggest to you that it is very much there. It seems peculiar that the discretion is provided for in the early part of the bill, but certainly not provided for by virtue of Mr. Kanter's amendment. That is speaking to the amendment, itself, not to the amendment to the amendment.

Obviously, we move this amendment to the amendment to subsection 7(2) and have no quarrel with the amendment as it stands and has been written.

Mr. Chairman: So the long and short of that—although I am not certain that it was a point of order; it may have been—was that your party would be prepared to support a type of amendment similar to that being proposed now to Mr. Kanter's amendment, in terms of penalty.

Mr. Kormos: To 7(1).

Mr. Chairman: To subsection 7(1).

Mr. Kormos: Mr. Kanter's amendment deals with 7(2).

Mr. Chairman: Subsection 7(2). But I think the gist that Mr. Chiarelli's hook or question was whether or not, if this were to be voted on and voted favourably, your party would support an amendment of a similar nature to subsection 7(1)? Now, I am not going to ask again.

Mr. Kormos: Okay, I appreciate that.

Mr. Chiarelli: Just on a point of clarification, I do not want to debate the issue that Mr. Kormos raised at length, but subsection 7(2) is basically a municipal closing bylaw where a municipality passes a bylaw closing an establishment. The bylaw under subsection 4(1) requiring a retail business establishment to be closed on a holiday shall provide that any person who contravenes the bylaw is guilty, etc. The provincial framework, basically a tighter status quo than we have under the old law, permits stores to be open. So there is a distinction.

Mr. Chairman: You are getting into the question that Mr. Kormos raised about being prosecuted for two different offences. I am not going to go into that now. We are really discussing subsection 7(2). I only got into it, because you wanted some indication as to whether they would support a similar amendment to 7(1). I understand they would. I do not know whether you want to ask the same question of Mr. Runciman.

Mr. Runciman: I have no difficulty with that.

Mr. Chairman: All right then, why do you not continue, Mr. Kormos? I think we have solved that.

Mr. Kormos: I have some concern then, and perhaps I am misreading the bill, if there is a suggestion that subsection 7(1) does something that 7(2) does not do—

Mr. Chairman: Subsection 7(1) is everyone who sells or offers for sale. Subsection 4(1) is if the municipality, as I understand it, decides not to allow a place to stay open and it stays open, it can be prosecuted under that bylaw or lack of bylaw—it would be a bylaw; so they are different.

Mr. Kormos: As I understand it—perhaps I am wrong, maybe this should be clarified. I apologize to the people here who already understand this. It seems to me that subsection 7(1) is all-inclusive; in other words, subsection 7(1) does everything that 7(2) does, but 7(2) does not do everything that 7(1) does. That is to say that subsection 7(1) applies in a municipality where there is no bylaw passed, as well as in a municipality where there is a bylaw passed, whereas subsection 7(2) can only apply in a municipality where there is a bylaw passed and cannot be used by a municipality to prosecute retailers who are in violation of a statute where there is no Sunday shopping permitted.

Mr. Chairman: I am not sure which one of our counsel is required to answer that one. I do not think it is legislative counsel. Mr. Spring, would you like to come forward and address that point? Do you understand what Mr. Kormos is saying?

Mr. Spring: I am going to have a shot at it, if I may. The purpose of subsection 7(2) and the amendment before the committee is twofold. One, it is to ensure the same maximum fine structure as between an offence under a bylaw on the one hand, and an offence under provincial legislation on the other. However, if you look at subsection 7(2), you will see that it is a bylaw requiring a retail business establishment to be closed on a holiday that creates the offence. I suggest to you that is perfectly natural.

On the other hand, if there is a bylaw permitting a store that would otherwise have to be closed—let's call it a shoe store—to be open between the hours of 1 p.m. to 6 p.m. on Sunday and the shoe store chooses to open at 7 p.m., there is no offence created against the bylaw. The bylaw is merely an exemption from the provincial law. The offence in that case would be under the provincial law and not under the bylaw.

However, if there was a municipal bylaw requiring drugstores to close on Sunday and they choose to open in defiance of that municipal bylaw, the offence is then created under the bylaw. It is only where the bylaw acts to close something which would otherwise have to be open that the offence is created under the bylaw. That is what subsection 7(2) is all about.

If the bylaw, on the other hand, permits something to open which would otherwise be required to close by the provincial framework, then the store which chooses to open outside of that bylaw would be committing an offence under the act and not the bylaw.

Mr. Chairman: The first example you gave, if they decided to open till 7 p.m. clearly would be under subsection 7(1), because clause 4(4)(b) allows the bylaw to limit the opening to "specific times or to a certain number of hours."

Mr. Spring: Yes. The bylaw acts as an exemption to the provincial law. If you do not come within the exemption, you are in breach of the

provincial law. Whereas, if the bylaw closes something down which would otherwise be permitted to open, then it is the bylaw itself which creates the offence.

Mr. Kormos: In the framework of this bill, I do not understand how the bylaw can require something to be closed down, when you have subsection 2(1) basically saying that no business shall open.

Mr. Spring: Subsection 4(1) says "despite sections 2 and 3."

Mr. Kormos: I hear what you are saying. Once again, it says that the bylaw may permit a business establishment to be open on any holiday and section 4 gives the various combinations and permutations that could be employed, such as hours, certain holidays, not all holidays, what have you.

Mr. Spring: That is correct.

Mr. Kanter: Could I just interject? Section 4 also permits a municipality to require that retail business establishments be closed on any holidays.

Mr. Kormos: Quite right. That is why I am asking this question. Subsection 2(1) requires all retail businesses to be closed on holidays. The power of a municipality to require a business to be closed on holidays would appear redundant, when in fact their power really is to permit businesses to be open and to prescribe the days and times when they are permitted to be open, creating the exemption. The power to require a business to be closed is a moot power.

Mr. Spring: With respect, I have to disagree with the member. Section 2 does not require all retail businesses to be closed; it does until you look at section 3—and section 3 creates a whole lot of exemptions to section 2. It is those exemptions that are currently in the legislation that the municipality has the power to alter under section 4 and to require those things to be set out in the exemptions to close. For instance, small food stores, antique stores, tobacco stores—I am merely listing those under subsection 3(1).

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Mr. Chairman: You do not have the original bill before you, do you?

Mr. Kormos: Yes, I do. Does that mean—

Mr. Chairman: No, no. Do you have the original bill? That is an amendment.

Mr. Kormos: I am sorry.

Mr. Chairman: That is not a total bill.

Mr. Kormos: You are talking about the Retail Business Holidays Act?

Mr. Chairman: Yes. That is an amendment to the—

Mr. Kormos: I am okay with the Retail Business Holidays Act. Does that mean that this bill could conceivably give a municipality the power to interfere with the status quo as we know it now, such that it could shut down

small family-run corner stores—what we call convenience stores? In its own discretion, let's say succumbing to the lobby of some other group in the municipality, it could shut down the mom-and-pop stores that have serviced the community for so many years, utilizing their exemption under the Retail Business Holidays Act?

Mr. Spring: That is the legal effect of the amendment as set out, yes.

Mr. Kormos: I have to apologize because obviously I am a neophyte here.

Mr. Chairman: That is fair enough.

Mr. Kormos: I was not familiar with the history of the debate over this. I should ask you, Mr. Chairman, whether that was discussed at the onset of the discussion of this particular bill—the impact of the municipality on the power it was given by virtue of this bill, not really just to permit stores to be open above and beyond what was permitted to be open before. Are there absolutely no guidelines in the bill whereby a city council or a municipality, as defined in the beginning of the bill, could shut down retail institutions that have been there for decades and generations? Was that discussed at the onset in terms of the impact of that power to shut down?

Mr. Chairman: I do not answer questions like that.

Mr. Kanter: I do not recall. I guess I have two views of answering this question. I think Mr. Kormos is raising some questions that more properly should be raised when discussing other sections of the bill. I think section 4, for example, local option, is still open. That would be my primary response. Second, I do not recall much discussion, certainly not by his colleagues or indeed any members of the committee. But I do not think that would be precluded because section 4 is still under consideration and we will be returning to section 4 in due course.

Mr. Chairman: I think that is legitimate. There are not too many rules that I get to enforce, but there is one of them that we remain within the relevance of the section being discussed, I guess so we do not do it four or five times over, although that happens sometimes too. So if we could go back, you will get to that.

Mr. Kormos: I apologize once again. If we are speaking about the power of the municipality to enforce a bylaw, is the cart not really being put before the horse here in terms of creating an offence when the ambit or the real scope of the legislation as to the discretion of the municipality has not been discussed yet? I am just having difficulty now meaningfully discussing the penalty section in an offence section when we really do not—at least I do not—understand. I am shocked and horrified by the prospect of what we spoke of about the impact.

Mr. Ballinger: Maybe you should speak to your colleagues. We have been following their amendments.

Interjection: It is your amendment.

Mr. Ballinger: That is right.

Mr. Chairman: All right. Just a second.

Mr. Kormos: As I am saying, I am very surprised that the consideration of the impact of section 4—

Mr. Chairman: I do not know whether you have an update by the clerk before you. You should have. If you look at the way we have proceeded, there were several that we stood down. We dealt with an amendment adding subsection 4(1a). In the absence of the clerk, I cannot recall why we jumped on to—

Mr. Kanter: I have mine in front of me. I believe it says, with respect to section 4, which I believe is the section in question, that it was agreed to stand down further consideration of section 4.

Mr. Chairman: Yes, that is right.

Mr. Kanter: So I think it is still stood down.

Mr. Chairman: So you will see there that that is how we got to that stage.

Mr. Kormos: Okay, thank you. That is fair enough.

Mr. Ballinger: I think for the benefit of the member for Welland-Thorold, we on this side of the committee have really been trying to accommodate mostly your party with respect to standing down. All of the amendments have been really at the lead of Mr. Philip:

Mr. Chairman: Standing down would have been done on unanimous consent.

Mr. Ballinger: Initiated by the other party.

Mr. Kormos: But the amendment here, let's not forget, is Mr. Kanter's amendment.

Mr. Chairman: Yes. But the point that has been made is—

Mr. Ballinger: But the original amendment in the discussion, or the amendment to the amendment, is Mr. Philip's.

Mr. Kormos: Quite right, but the amendment that gave rise to the amendment to the amendment is Mr. Kanter's amendment.

Mr. Runciman: So there.

Mr. Chairman: The normal way of proceeding with clause by clause is that you move along in sequential order, unless the committee, on unanimous consent, agreed to stand down an item. That is what happened here—we agreed to stand down. In fact, we agreed to stand it down until November 14.

Mr. Kanter: That is a little optimistic. I did not read that date.

Mr. Chairman: I am not sure whether that was 1988 or 1989. That was done on Tuesday, November 8, 1988. What you said made sense, I guess: that you have to deal with the major issue before you can properly deal with the other. If you wish to go back to section 4, you have the right to ask for that, and if you can get unanimous consent of the members to do that, we can go back to section 4. I do not know whether that is what you are doing.

Mr. Kormos: Thank you for the direction. It would seem like—

Mr. Chairman: I do not want to mislead you. Mr. Philip must have had some reason for doing it the way he did, and I think it was Mr. Philip. You may want to talk to him, in fairness.

Mr. Ballinger: I was being kind to you.

Mr. Chairman: I do not want to hook you. That is not my fashion.

Mr. Kormos: No. I expected you to continue to be kind throughout the course of the afternoon.

Mr. Ballinger: I am a rookie as well.

Mr. Kormos: All right.

Mr. Ballinger: We are on the same wavelength.

Mr. Kormos: Perhaps this matter should be stood down, in deference to a discussion, really, of the powers that are being purportedly granted by the legislation.

Mr. Chairman: Just a second. The way it works too, and I had not thought of this, is if the bill comes in and as we go along there are no amendments to a specific section, we move past it and then go through the amendments. Am I right?

Clerk of the Committee: Yes.

Mr. Chairman: That is what we are doing at the moment. The next amendment up was Mr. Philip's, and that is what we are dealing with.

Mr. Kormos: But we are not dealing with it until we deal with Mr. Kanter's amendment.

Mr. Chairman: No, we deal with his first. He is the amendment to the amendment.

Mr. Kormos: I am sorry; I thought you were speaking to the amendment to section 6.

Mr. Chairman: No. The only time that we discuss it in clause by clause is if there are amendments before us. If there are amendments before us, then we will deal with them. If there are not, we will pass over the item. We could, I suppose, vote on it, but we agreed to stand down voting on it until we moved on to the next amendments. I think that is my recollection of what happened.

Mr. Kormos: Mr. Hampton is to be here today as well and he is briefly in another committee. I wonder if we could have perhaps a 20-minute adjournment so I could seek out Mr. Hampton's views on this, in view of the fact that I am a neophyte and I know you would not want to take advantage of my unfamiliarity here.

Mr. Chairman: Why do we not do this: You are going to need unanimous consent. You are entitled to it if there was a vote called, but you are going to need unanimous consent. Perhaps I should first ask if there is unanimous consent to accede to that request.

Mr. Runciman: Can I just make a comment? I think it is an eminently reasonable request, given the member's newness to this committee. If, for example, a governing party member took a position in the absence of Mr. Kanter, I think it would create some difficulties for you. I think it is the same here with the opposition parties as well. I think it is a reasonable request to allow Mr. Kormos a very limited amount of time to consult with his colleague. I think it is quite reasonable.

1620

Mr. Chairman: We are going to require unanimous consent in any event. Do I have unanimous consent to adjourn for 20 minutes?

Mr. Kanter: Quite frankly, this is a very unusual procedure, where the very party which has moved an amendment to an amendment is now seeking an adjournment. I think that is a rather unusual procedure. We have tried to proceed in an orderly fashion. We have tried to make allowances for both opposition parties. We have indicated quite clearly, for example, that the substance of the amendment to the amendment moved by the NDP is one we will consider quite sympathetically. It seems this afternoon that Mr. Hampton has some concerns relating to other provisions of the bill, another provision I believe we are going to return to. I would say that a very brief adjournment, a maximum of five minutes, perhaps, under these circumstances, should be considered by the committee.

Mr. Kormos: The generosity of Mr. Kanter is well received, but if we are going to have an adjournment, let's be fair. Give me a reasonable period of time. Mr. Ballinger raised the matter that I may well be in a position where I am going to be offending other people on the committee. I am here merely as a substitute. I appreciate Mr. Ballinger's direction in that regard. It is basically in response to his comments that I would ask for the adjournment. Fifteen minutes, I am sure, would be more than adequate. If it is not, I will let you know.

Mr. Chairman: Mr. Kanter, I am probably going to incur the wrath of my own members, but I think there is a very unusual situation here with a new member coming in in a by-election. I am going to split the difference. I am going to recess for 10 minutes.

The committee recessed at 4:23 p.m.

1635

Mr. Chairman: We have returned. I am not sure, Mr. Kormos, if you had a chance to confer with your colleague or not.

Mr. Kormos: Try as I could, I could not find him. As I say, I do not want to interfere with what progress has been made up to this point, but really what it comes down to is that our amendment creating the dual penalty system is in itself a good amendment, which we recognize and I am sure the balance of the committee does. The matter of the suitability of the penalty amendment by virtue of Mr. Kanter is still left in limbo.

Once again, the committee can, as I understand it, review even a matter which has already been debated and voted on—

Mr. Chairman: With unanimous consent, you could.

Mr. Kormos: With approval from the committee. Perhaps the best course of action, in view of the order of events which have taken place so far, would be not to seek a standing down of that, because I am sure that if it were to be apparently appropriate that there would be that consent or approval from the committee to review, redebate or reconsider the whole matter of subsection 7(2) and/or subsection 7(1), more significantly subsection 7(2), because it relates to the municipal powers to the bylaw, I am confident that would happen in the normal course of events, in any event.

Mr. Chairman: I will not say yes or no to that.

Mr. Kormos: It is perhaps feckless optimism on my part.

Mr. Chairman: I gather we do not have unanimous consent, at least that was the impression I got before. We are back to subsection 7(2). Mr. Kormos still has the floor.

Mr. Kormos: It is a matter of the amendment. The amendment is an appropriate one, and I am speaking of our amendment to the amendment. It is in some isolation from the impact of the penalty in general; but if there is a penalty, then it should be in the manner prescribed.

I should indicate now that in the event that this amendment is passed, that is to say creating the hybrid provision for maximum penalties, I will be making an amendment to Mr. Kanter's amendment, seeking minimum penalties. I am aware of the earlier amendment made by Mr. Philip, once again.

Mr. Ballinger: A joke.

Mr. Chairman: I do not want to interrupt you, Mr. Kormos, but what you intend to do you can certainly do at the appropriate time and we will rule on it. For the moment, I would ask you to address the amendment to Mr. Kanter's amendment proposed by your party.

Mr. Kormos: That was November 8, 1988. That is the one Mr. Ballinger is responding to.

Mr. Chairman: You do not pay any attention to interjections. They are out of order.

Mr. Kormos: He was in line of sight.

Mr. Chairman: Just as an aside, I often wonder, if interjections are out of order, why do they keep those young ladies from Hansard in the middle of the floor? That seems to be an invitation for interjections. In any event, go ahead. That was just an observation I thought I would make.

Mr. Runciman: They are only supposed to be recorded if you respond to them. That is my understanding.

Mr. Chairman: Oh, that is right. That never happens. So if you would like to return, Mr. Kormos, to Mr. Philip's amendment to Mr. Kanter's amendment or—

Mr. Kormos: But I was, because it creates a ceiling but it also neglects—

Mr. Chairman: Sorry, but in order to preserve your words for posterity—

Mr. Kormos: I have to lean closer to the mike. Well we could live without posterity today and I suspect next time I am here and perhaps even the time after that.

Mr. Chairman: You want at least to get on the shelves in the bound edition.

Mr. Kormos: Back to the amendment to the amendment: It is a matter of establishing a ceiling which is obviously some guideline for a sentencing judge, but as I said, it remains lacking. The minimum is no fine. The applicability of legislation that would permit, for instance, a suspended sentence is there. It permits a judge or a sentencing tribunal or a sentencing justice of the peace to consider if he or she wishes the seriousness of the offence based on quantum of sales, but it does not impress upon either a sentencing justice of the peace or a judge the inherent seriousness of the matter.

Quite frankly, other than further comments on the root amendment, I think I have made my position clear as to Mr. Philip's amendment.

Mr. Chairman: Thank you very much, Mr. Kormos. Mr. Runciman, do you have any comments?

Mr. Runciman: Before I speak to the amendment to the amendment which I would like to do, I would appreciate hearing Mr. Kanter's observations; the government reaction to which he alluded earlier and the fact that the government may be receptive to Mr. Philip's proposal. I would like some elaboration on that if possible.

Mr. Chairman: I suppose I should have put the question, "Are there any other honourable members who wish to speak to the matter"? Any hands?

Mr. Chiarelli: I think that, through a process of osmosis or whatever, we have arrived at an amendment to an amendment which will give substance to the purpose of the bill and increase its effectiveness. I think it is worth recalling that the bill has basically two sections. One is a provincial framework whereby the gist of the existing legislation will continue, with stronger enforcement mechanisms for those municipalities which wish to do nothing. That is, once Bill 113 is passed, a municipality can do absolutely nothing and this provincial framework will continue to exist with stronger enforcement mechanisms.

Vis-à-vis the stronger enforcement mechanism, I think that an amendment which would give the court the option of meaningful fines for those large offenders, if I can put it that way, who may choose to defy the law is an improvement. I think I personally would be prepared to support that, because it certainly is not, in my opinion, the intention of this government to enact a law which would permit the so-called majors or large violators or consistent violators to be able to, in effect, pay a fine on a regular basis and get away with it. I hope that an amendment will be passed whereby that additional provision for the possibility of stricter fines will exist within the provincial framework.

In addition, I think it is important, because this is a local option law, that the local municipality also have some stronger teeth in its bylaws in order to create a deterrent for any large retail business establishments against disobeying the law on a regular basis.

I believe that the amendment to the amendment, providing that the court can look to gross sales and effectively have the possibility of applying a higher fine, is a good provision. I compliment Mr. Philip in arriving at a concept and a wording that I feel will be a real improvement to Bill 113.

Mr. Chairman: Does Mr. Runciman or any other member have any comments?

Mr. Runciman: I am somewhat taken aback by the member's supportive comments. I do not know.

Mr. Chairman: I was at first, too, frankly.

Mr. Runciman: It rings some alarm bells, to be quite honest.

Mr. Sola: Vote against your own amendment.

Mr. Runciman: The government's actually recognizing at least one of the inherent weaknesses in this bill is astounding. We have gone through this exercise for some months now with rigid opposition in every legitimate proposal by the opposition parties, and now all of a sudden we are having supportive comments offered. I welcome it. It may lend credence to some of the rumours that we have heard: that the government is going to eventually pull this bill and reintroduce it in the speech from the throne.

Mr. Chiarelli: We are debating, not going on a fishing expedition.

Mr. Runciman: Sometimes the opposition is privy to these matters before government backbenchers.

In any event, I have to compliment the members of the New Democratic Party for introducing this amendment. I think that they, along with our party, have attempted to be constructive throughout this process, to introduce measures that will address some of the very valid concerns held by people right across this province that have, up to this point, been ignored by the Liberal government members sitting on this committee and the Liberal government members at large. We simply have not had a responsive approach on their part.

Mr. Kanter: We are not very used to being complimented.

Mr. Ballinger: That is Mr. Runciman's way of complimenting.

Mr. Runciman: We very much welcome the changed attitude and we hope it continues throughout the remainder of our deliberations. I want to say, in respect of this particular amendment to the amendment, that indeed it is an appropriate proposal. I think that Mr. Philip, in his wisdom, recognized that there are a number of businesses across this province who operate on such a scale that the original penalty provision would not provide an effective deterrent. He has, in his wisdom, introduced a change that will, indeed, accomplish what I think we want to achieve in that respect.

I do not want to deviate from the intent of this amendment to the amendment, but I think that Mr. Kormos and all of us have struck on another weakness in respect of this whole penalty area. That is, the lack of having any minimum penalty. I know that we have discussed that at length in the past, but apparently Mr. Kormos is indicating that hopefully we can resurrect that issue. I think it, again, is something that, if the government members would

step back and assess, is indeed a weakness and provides considerable latitude to a sentencing judge that perhaps is not appropriate and will render the bill ineffective in many instances in municipal legislation as well.

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I am not sure I can really elaborate any more with respect to this particular amendment, other than to say that I think it is appropriate and I am encouraged by the government response and I hope that kind of co-operative spirit will continue.

Mr. Chairman: I think we are ready to vote. Before we do, I just want to make certain that we have the wording correct, because there have been deviations back and forth. I am going to read it again.

Mr. Kormos moves that the proposed subsection 7(2) of the act, as set out in Mr. Kanter's motion, be amended by striking out "a fine of not more than \$50,000" and inserting in lieu thereof

"a fine of not more than the greater of:

"(a) \$50,000; or

"(b) the gross sales in the retail business establishment on the day on which the contravention occurred."

You may recall that Mr. Kormos had indicated he wanted "of" instead of "in," but I understand legislative counsel has spoken with him, and he is nodding his head in agreement.

Those in favour of the amendment, please signify. Unanimous.

Motion agreed to.

Mr. Ballinger: Is this live, Mr. Chairman; in living colour?

Mr. Chairman: There is a vote going on, Mr. Ballinger. Those in favour of Mr. Kanter's amendment, as amended?

Mr. Kormos: Could you hold that for a moment? I do propose, as I indicated earlier, to make another amendment to Mr. Kanter's amendment.

Mr. Chairman: All right. That was—

Mr. Kormos: I indicated that in the course of the last 30 minutes.

Mr. Chairman: All right. Do you have that amendment available in writing?

Mr. Kormos: I am told it is almost instantaneous, but the amendment I would make is to add to the penalty section, as indicated in the just passed amendment, what amounts to a minimum penalty.

Mr. Chairman: All right. Before you present that, as I explained, if we are speaking—well, perhaps I should see it before I venture on.

Mr. Kormos: I would submit that the wording be that, in any event, the fine shall not be less than \$1,000. It would make the minimum provision

applicable to either of (a) or (b), and that is to say, either the \$50,000 ceiling or the gross sales ceiling.

Mr. Chairman: Just a second. Where is the one that we dealt with? Do you have it?

Mr. Kormos: There is the November 8, 1988—

Mr. Chairman: Yes, I have it before me. There was also one on November 15.

Mr. Kormos: If I can find that one, please.

Mr. Chairman: You may not have a copy of it in the stack you have.

Mr. Kormos: If I could see the November 15 one, please.

Mr. Chairman: They are pretty much the same, except that the first one on November 8 dealt with an employee. The one on November 15 dealt with anyone, including an employer, and both of them were defeated. They were both minimum fines for a first offence of \$1,000 and then—

Mr. Kormos: There is more to it than that. I have the November 8 amendment. If I could see the November 15 one, if that is the handwritten one that talks about—no.

Mr. Chairman: That is right. The only difference between the two was that Mr. Philip moved the first one, which dealt with every person employed by or acting on behalf of a person carrying on a retail business, and the second one became more expansive in that it included anyone, which would mean it included an employer. That was the difference. That is why I did not rule it out of order, but both of them were lost. I would have to say that if your amendment is dealing with a minimum fine, then unless we have unanimous consent, I would have to rule that it is out of order.

Mr. Runciman: On a point of order, Mr. Chairman: For clarification's sake, were those earlier amendments dealing with this particular section of the bill?

Mr. Chairman: Yes, they were, subsection 7(2), both of them.

Mr. Kormos: Once again, perhaps if I could see what we are speaking about because the copy I have of the November 8 amendment—

Mr. Chairman: The clerk will show them to you.

Mr. Ballinger: Leave it up to Howie to only give you half the information.

Mr. Kormos: No, I got them from Mr. Dietsch the last time I was here.

First, the November 8 amendment that apparently was defeated deals with the amendment of subsections 7(1), 7(2) and 7(3).

Mr. Chairman: I should point out, Mr. Kormos, that according to the standing orders, when you put an amendment forward, if it is out of order and I rule it out of order, it is nondebatable.

Mr. Kormos: But I am not debating my amendment. I am debating my right to move that amendment. I submit that I am capable, perhaps not capable, but at least permitted to argue why you should permit that.

Mr. Chairman: No, the way it is done is that you would put the amendment forward. We have that in writing, I think. I would then review it. If I considered it to be out of order, it would then be nondebatable—my ruling. You then have the opportunity to challenge the chair or you can do it in an alternative way. You can ask for unanimous consent to allow it to be reintroduced. That, perhaps, is the first thing you would do.

Then, if they give you unanimous consent, there is no problem. If, however, they do not, you would have to introduce the motion. I would look at it and if it were out of order, then it would be nondebatable. Your only alternative is to vote against the chair's ruling.

Mr. Kormos: Fair enough, but I am loath to let the chair make an incorrect ruling without having heard the rationale for why I would consider this appropriate, but I appreciate what you are saying.

Mr. Chairman: If you do that, then in fact what you are doing is debating the motion.

Mr. Runciman: But you have not made a ruling, have you?

Mr. Chairman: Not yet I have not.

Do we have the amendment before us in writing? It is coming. Just hang on for a second.

Just to be perfectly clear, if you put forward an amendment that, on the face of it, is not out of order—in other words, if it is something that I am not certain of and I have not made a ruling on it so it is not obviously out of order—you have an opportunity, as does every member, to try to persuade me that it should not be ruled out of order. However, in this case, the amendment that is being put before us is one that was previously dealt with and accordingly is one that, on the face of it, is out of order.

Mr. Kormos: But, Mr. Chairman, I tell you that if it had been previously dealt with I would not have moved it.

Mr. Runciman: Can you reserve your ruling, Mr. Chairman, for a few minutes?

Mr. Chairman: Recognizing the fact that Mr. Kormos was not the person on the committee when Mr. Philip put his amendment forward, I will hear brief argument why he thinks it is in order.

Mr. Ballinger: On a point of order, Mr. Chairman: I think we have allowed a little latitude on our side with the new member, but quite frankly, a lot of the process in here has been deliberately dragged out by the opposition members. I do not think, as a member of the government side, that additional latitude should be allowed at this stage. We have already granted the honourable member an opportunity to discuss with his own members who have sat regularly on this committee. We have dealt with that particular amendment, and I think we should get on with the business at hand.

Mr. Runciman: It is a question of privilege.

Mr. Chairman: Let me first indicate that I do not consider that a point of order.

Mr. Chiarelli: On a point of order, and also a question, I will ask as a point of clarification whether Mr. Kormos is here as a member of the House, or has been properly substituted as a voting member today?

Mr. Chairman: Yes, he has. Mr. Runciman on a point of privilege.

Mr. Runciman: I think it is a point of privilege that Mr. Ballinger has impugned the integrity of the members of the opposition parties by suggesting that we have dragged this out.

Mr. Ballinger: I was just stating a fact.

Mr. Runciman: I disagree and I am sure Mr. Kormos and other members of the opposition parties would disagree in respect that we have done what we feel is our duty, our obligation, as members of the opposition parties, to represent a view that is widely held in this province with respect to this particular piece of legislation. I do not believe that we merit having our integrity impugned with respect to the way we have dealt with this issue.

To raise these issues as well, Mr. Chairman, when you have made a very generous ruling—and I think you have handled this whole matter in terms of the deliberations, while I have been present, in a most fair manner. No one can be critical of you, and I think it is unfortunate that members of your own party have taken you to task in this respect.

Mr. Chairman: I think what is happening here is Mr. Ballinger is attributing motives to you, which is out of order, and you are perhaps attributing motives to him, which is out of order, so I am cancelling the two of them out. They are both out of order.

Perhaps again not to the happiness of my own colleagues, Mr. Kormos not having been here, I am prepared to hear briefly, as I indicated, his reasons why this motion is in order.

Mr. Kormos: First, the November 8 amendment by Mr. Philip sought to strike out subsections 7(1), (2) and (3). It replaced them with subsection 1, a provision that the penalty guideline be the maximum penalty of gross sales, a fine equal to gross sales. Subsection 2 provided for not just minimum fines but sequential and cumulative minimum fines.

Now, the mere fact that the amendment was defeated does not explain whether it was defeated solely on the principle or the basis that there not be minimum fines, because we certainly know there was opposition to the concept that the fine be equal to gross sales. That was the motive, or at least one of the motives, as I understand it, for Mr. Kanter's own motion to amend subsection 7(2).

When the amendment that was defeated covers such a diverse number of issues, and when the only record is to the effect that it was defeated, and when it entails considerations not only of minimum fine but also of quantum of minimum fine—and that is to say it certainly could have met disapproval by the committee because it felt the amount of minimum fine was inappropriate, but it dealt, further, with the matter of sequential and cumulative minimum

finer, as well as with subsection 7(1), as well as with basically the repeal or the striking out of subsections 1, 2 and 3—that is a far cry from what we are suggesting here.

Once again, in terms of amendment, it is simply a matter of fine-tuning the amendment of Mr. Kanter. There has already been, as the chair sees, unanimous approval of the amendment made by Mr. Philip, which was to create this hybrid penalty. That begs now, as it is nearing perfection, if you will, in its isolated sense, discussion of—

Mr. Chiarelli: The bill is nearing perfection?

Mr. Kormos: The amendment, the section.

In view of the fact that we have now adopted, at least for the purposes of discussion of subsection 7(2), a hybrid maximum penalty, it begs discussion of whether a minimum fine is appropriate in a matter that is so thoroughly distinguishable from the several issues discussed, certainly, when Mr. Philip's motion was discussed and defeated on November 8.

Similarly, there is absolutely no wonder why the November 15 amendment by Mr. Philip was defeated, because it did not provide for a maximum penalty, other than for whatever maximum penalties would be statutorily imposed by reason of a general punishment section.

You will note that the November 15 motion sought to delete "a fine of not more than \$50,000," such that there would be no maximum penalty and merely imposed minimum penalties. Really, that is not a conclusive penalty section, or a revision of the penalty sections, either. No wonder it was defeated, in the absence of there being an existing maximum penalty by virtue of that motion.

Once again, the minimums provided for were consecutive and cumulative—\$1,000, \$10,000, and \$50,000—to be discussed at that point in time, without having passed the amendment that was just passed, that is to say, creating the hybrid maximum penalties. Really, it was a thoroughly and totally different discussion than I propose now on the amendment I have just made. We really are talking apples and oranges, among other things. We are speaking in two different contexts.

The fact is that on November 8 and November 15, respectively, the amended motion, as it exists now, was not in existence. It was not that motion that was sought to be amended by the amendment I am proposing.

These two motions, November 8 and November 15, respectively, are so distinguishable, November 8 because it covers a variety of issues, because it seeks to strike out, among other things, not just subsections 7(1) and (2) but also subsection 3, which is the consideration section in the course of sentencing. The mere fact that it was lost and that the record will show that it was lost does not reflect whether it was lost because of subsection 1 in the amendment; because of subsection 2 because of the fact that there were cumulative minimum penalties, or because the quantum of the minimum penalties was considered inappropriate.

Similarly, the November 15 motion is one which would leave a penalty section without a maximum penalty, and for that reason alone was perhaps justifiably defeated by the committee, notwithstanding that, once again, it was defeated, not in the context of the consideration of subsection 7(2) as we

now know it to be by way of motion, as amended with the hybrid maximum offence, and once again, notwithstanding that it shows minimum fines that are consecutive, cumulative and that are in grossly different figures from what I am suggesting right now, which is an amendment that there be a fine of not less than \$1,000, notwithstanding the maximums that are proposed in the hybrid provision.

It is basically creating a minimum fine of \$1,000. That is far different, because we are dealing now with an amended subsection 7(2). We are not dealing in the same context as this committee dealt with the motions November 8 and November 15, respectively—two grossly and radically different things.

Mr. Ballinger: You missed your calling. You should have been a lawyer.

Mr. Kormos: I have missed it.

Mr. Chairman: Any other members wishing to address the issue?

Mr. Chiarelli: Just very briefly, the issue of minimum fines has been dealt with in a number of amendments and amendments to amendments, and by the member's own admission, some of them were very ill conceived and poorly drafted by members of his own party. That being the case, I do not think the chair or the members of this committee should now permit amendments on the same issues all over again. So with the greatest respect, I believe the chair should rule that the amendment is out of order.

Mr. Chairman: Any further members wish to comment?

Mr. Kormos, you did not miss your calling at all, I do not think. The argument you put forward is enticing, but I was here, as were other members, during the debate on this issue and in my recollection it was dealing with the question of a minimum fine being either acceptable or unacceptable. In view of that, even though it is being framed in a different fashion and argued in a rather interesting way, it does contravene the rules. Accordingly, I rule that the amendment as proposed by you is out of order.

Excuse me just a second. Why have you—

Mr. Chiarelli: I thought we were going on to the next item. Sorry.

Mr. Chairman: We will go on to the next item, to see whether Mr. Kormos wishes to take any further steps. If he does, he is—

Mr. Kormos: Please, Mr. Chairman, I would challenge the chair at this point. I would ask for a 10- to 15-minute recess or adjournment to consider my comments.

Mr. Chairman: You are entitled to up to 20 minutes, if requested, to call in voting members. If that is what you are asking for, that is obviously available to you. It is a matter of right.

Mr. Kormos: I was just going to ask for 15 minutes to consider my comments and then ask for the 20 minutes, but—

Interjections.

Mr. Chairman: The rules do not call for that.

Mr. Kormos: So be it, Mr. Chairman.

Mr. Chairman: Are you asking for 15 minutes?

Mr. Kormos: No. I was going to ask for 15 minutes, but that would perhaps be abusive on my part, so if I could have 20 minutes.

Mr. Chairman: Are you asking for 20 minutes?

Mr. Kormos: Yes, please.

The committee recessed at 5:10 p.m.

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Mr. Chairman: I recognize a quorum. There was a challenge to the chair. Time has been allowed for members to be gathered. Those—

Mr. Kormos: If I may, Mr. Chairman. I know Mr. Hampton is en route and I tried to give him the best estimate of time as to when the 20 minutes would expire.

Mr. Chairman: It is 5:30.

Mr. Kormos: He had not been told about the adjournment—

Mr. Chairman: I will have to deal with Howie, I guess.

We are back in session. Challenge to the chair has been made. Twenty minutes allowed under the rules have been allocated for members to be mustered.

Those in favour of upholding the ruling of the chair?

Those opposed?

The challenge is defeated.

We were at the stage of Mr. Kanter's amendment as amended. Shall it carry?

Those in favour?

Mr. Kormos: May I speak on that, Mr. Chairman?

Mr. Chairman: Well, the vote has been called. I will take a reading with the clerk, who has been here for endless years. Hang on a second.

Here is Mr. Hampton.

Technically, the vote has been called. Of course, by unanimous consent you can do anything. I going to put it to the question of whether we have unanimous consent to allow comment to be made on the—

Mr. Runciman: On a point of order, Mr. Chairman: Maybe the clerk can expand on this, but are you not required to offer the opportunity for members to speak before calling a vote?

Mr. Chairman: I am advised by the clerk that, technically, once the question has been called, no one having indicated a desire to speak to it until the vote was being called, the vote is in progress and no one can speak to the vote. Albeit it may not be realistic fairness, but I would say that we can do anything by unanimous consent. If we have unanimous consent, I would be—

Mr. Kormos: If I may, Mr. Chairman, surely the mere fact that the amendment has passed does not preclude discussion on the motion as amended. That is all the more important. For the chair not to invite that and indeed not even to provide that littlest gap of time in which people can make their interjections seems to me not to be kosher, either.

Mr. Kanter: There was discussion on the motion, Mr. Chairman.

Mr. Kormos: As amended, Mr. Chairman.

Mr. Chairman: I think I will go away again.

I think, as a matter of fairness, I will give you five minutes to speak to the amendment to the amendment.

Mr. Kormos: No, I do not want to speak to the amendment to the amendment. I supported that.

Mr. Chairman: No, to Mr. Kanter's motion as amended. I will give you five minutes as an accommodation. Technically speaking, the vote was called, Mr. Kormos. I am not required to interrupt that vote. In fact, by the standing orders, once a vote has been called the vote is in progress and no one is to speak. As a matter of fairness, however, I am prepared to give you, and it will probably not be agreed upon by all parties, but I am prepared to give you five minutes to speak to Mr. Kanter's motion as amended. Then we will take the vote. So you have five minutes to speak.

Mr. Kormos: As I recall the course of events, there was a vote on a challenge to the chair, then further speaking on behalf of Mr. Kanter's amendment as amended, then a call for a vote without there being any opportunity for anybody to speak on it. It was sort of greased up and—

Mr. Chairman: Again, as I say, I am advised by the clerk that normally this would be done by unanimous consent. Recognizing realistically that unanimous consent would probably or possibly not be granted I am prepared, simply as a matter of fairness, to give you five minutes. Technically the vote has been called, and you are not entitled to speak to that. That is my ruling.

Mr. Kormos: May I ask the question again, being somewhat naive about how these sorts of things go on? Is there not an invitation for people to speak to the motion before the vote is put, or the question is called?

Mr. Chairman: I indicated that we had had considerable discussion. I inquired whether we were ready to vote. There was no indication by anyone that he wished to speak further. We were just about in the course of the vote, Mr. Kormos, and it was at that point that you raised the question. I was actually trying to accommodate one of the other members who had to leave here and has already left at 5:30.

However, since no one raised a hand to be recognized, I am ruling that

technically the vote was in progress. However, I am also saying as a matter of fairness and again recognizing that you are a new member, that I am prepared to bend in the matter. But I am indicating that that will be five minutes.

Mr. Kormos: I appreciate how nice everyone has been to me all month. But I do not want a whole lot of—

Interjections.

Mr. Kormos: If I may challenge the chair in this regard—

Mr. Chairman: Actually, the ruling that I am making is as a matter of fairness. It is not a ruling in the technical fashion. Technically, I could say that the vote has in fact been called.

Mr. Kormos: I am genuinely concerned.

Mr. Chairman: I know what the point is that you are making.

Mr. Kormos: I appreciate what the chairman is saying. The chairman is saying that there has been lots of discussion on the amendment to subsection 7(2). There has not been any discussion. How can there have been any discussion on the amendment to subsection 7(2) as amended by the amendment that just passed? There cannot have been any discussion about that by virtue of the fact that the amendment to the amendment only just passed. Surely it is incumbent upon the chair, to avoid leaving the impression, almost, of pettifoggery, to give an opportunity—

Mr. Chairman: Is that a disease or what?

Mr. Kormos: Not as of this year.

If I had put my hand up at that point, I would have been perceived as wanting to support the people who were supporting the amendment. There was, literally—as whatever record there is of this will demonstrate—not a moment's pause other than for someone to be grossly impolite and interrupt the chair.

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Mr. Chairman: All right. Let me inquire as to whether or not there would be unanimous consent among the members. Should Mr. Kormos be given the right to speak and say that the vote be taken at five minutes to six? Is there unanimous consent to that effect?

Mr. Kanter: Yes.

Mr. Chairman: Mr. Kormos, Mr. Hampton.

Interjection.

Mr. Chairman: Is there unanimous consent or is there not?

Mr. Kormos: No. I cannot give unanimous consent.

Mr. Chairman: All right. There is no unanimous consent to it. Then I rule that technically the vote has been called, there should not be any further discussion and the vote is now in progress.

Mr. Kormos: At this point I indeed challenge the chair on what I say constitutes a ruling as to the course of events; I submit that the chair, with respect, erred in calling the vote.

Mr. Chairman: All right. Fine.

Mr. Kanter: I think we are in the midst of a vote and the only issue before this committee is to proceed with the vote at this point.

Mr. Chairman: Is that a point of order that you are raising?

Mr. Kanter: Yes, it is. I heard some question about a challenge to the chair, and I do not believe that that is possible at this time. I think we are conducting the vote and that is the only business before this committee.

Mr. Kormos: Mr. Chairman, if I may—

Mr. Chairman: Just a second, Mr. Kormos. Let me take advice from the sage.

There is a challenge to the chair on the ruling that I made and you vote on the challenge to the chair. Are you ready to vote?

Mr. Kormos: Not all members of the committee are present.

Mr. Chairman: Mr. Runciman spoke to me earlier and said he had to leave at 5:30. That was the reason perhaps that the matter was not dealt with expeditiously, I felt, but perhaps I was a little fast on the gun. He cannot be here. In fact, I had suggested to him that we try to take the vote at 5:30. I had assumed we were taking the vote at 5:30 and tried to accommodate him. I am asking, are we ready to take the vote on the challenge to the chair?

Mr. Kormos: I appreciate that, but I am asking for an adjournment—

Mr. Chairman: For what purpose?

Mr. Kormos: —so as to get those members of the committee who are not here for the purpose of voting.

Mr. Chairman: No, no. You are entitled to 20 minutes—

Mr. Ballinger: For your party.

Mr. Chairman: —for your party, and your party is here. I believe they are here, anyway. Mr. Hampton, are you here?

Mr. Kormos: I believe the matter of a challenge to the chair can and should be discussed.

Mr. Chairman: No. A ruling of the chair is nondebtable. You are now challenging the chair. We are ready to vote.

Mr. Kormos: I understand that, but—

Mr. Chiarelli: It has been debated for the last 15 minutes.

Mr. Chairman: I am sorry, Mr. Kormos. I guess there comes a point in time—I try to be fair. I have tried to be fair today with all members and I am exceeding the rules and being fair.

Those in favour of upholding the chair?

Those opposed?

The chair's ruling is upheld.

The vote is now in progress.

Those in favour of Mr. Kanter's amendment as amended?

Those opposed?

You have to vote. The standing orders require you to vote. I hope I am not sounding dictatorial. I am not trying to. I do not make the rules; I just enforce them, and fairly, I hope.

Mr. Kormos: Mr. Chairman, I saw you looking—

Mr. Ballinger: I want a recorded vote.

Mr. Kormos: —over to that side when you asked for those who were in favour, and I thought if I put my hand up at that point, you would not have seen it in any event.

Mr. Chairman: You are learning fast, Mr. Kormos. All right. Carried.

Motion agreed to.

Mr. Ballinger: That's the most interesting vote I have seen in a long time.

Mr. Chairman: The next amendment we have before us is a New Democratic Party amendment. I gather it will be moved by either Mr. Hampton or Mr. Kormos.

Mr. Kanter: Mr. Chairman, on a point of order: This relates to the order of business. There was discussion during the previous matter of an amendment, for consistency's sake, to subsection 7(1) of the act. I think that logic would require that that motion be moved now.

We inquired if Mr. Kormos would like to move an amendment to bring consistency to it. We would certainly allow him to do so. Otherwise, the government would like to move an amendment. I have the wording of it here. We would like to introduce it at this time as being logically the next order of business before the committee.

Mr. Kormos: I will move that.

Mr. Chairman: You are moving that amendment?

Mr. Kormos: Yes.

Mr. Chairman: All right. Mr. Kormos is moving it.

Mr. Chiarelli: The copies show it is a government motion, but it should be corrected to show it is a motion by Mr. Kormos.

Mr. Chairman: Mr. Kormos moves that subsection 7(1) of the act, as

set out in section 6 of the bill, be amended by striking out "a fine of not more than \$50,00," and inserting in lieu thereof, "a fine of not more than the greater of, (a) \$50,000, or (b) the gross sales in the retail business establishment on the holiday on which the contravention occurred."

All right. I gather there should be no need for discussion on this or am I being presumptuous?

Mr. Hampton: You are being presumptuous, Mr. Chairman. Do you want any more direction?

Mr. Chairman: All right. I am going to make certain that I ask whether any members wish to speak to it. Mr. Kormos, you are moving it even though, as Mr. Chiarelli indicated, it has "government motion" on the top. Would you like to speak to it?

Mr. Kormos: Once again, as Mr. Kanter indicated, we had spoken about this earlier. Obviously, both penalty subsections should be consistent. It makes me reflect on some of the comments earlier about the possibility of double convictions, in that a provincial offence may not be deemed necessarily to be in conflict with what is a municipal offence, notwithstanding that the terms of the bylaw a municipality would necessarily have to pass are dictated by subsection 2. The fact is that the bylaw would be passed by virtue of the municipality's powers under its own empowering legislation.

One would think that, among other things, the fact that both subsections 7(1) and 7(2) read the same in terms of penalty clauses might impress on upon those who would argue for double conviction, or at least provide an argument in response, that indeed the two penalties being identical, it was designed to be one or the other.

In view of the fact that one prosecution would take place as an offence contrary to this new legislation and the other prosecution would take place as a contravention of a municipal bylaw, it remains—unlike some scenarios which we are all familiar with now where there has to be an opting of one or the other—that there is a very real likelihood of there being double prosecutions, one under subsection 1.

If the other prosecution were pursuant to subsection 2, I would think strong arguments could and would be made against double prosecutions. But in view of the fact that the municipal bylaw is not even going to make reference to subsection 7(2), it remains entirely conceivable that a prosecution, indeed even a conviction, could occur under subsection 7(1) and a penalty be imposed, with a subsequent or immediate prosecution under the municipal bylaw, particularly when you usually have two different policing authorities involved.

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Mr. Chairman: Can I just interrupt you for a second? Would there not be a plea of autrefois acquit or autrefois convict if—

Mr. Kormos: No, because you are dealing with two different matters. You are dealing with, one, a municipal bylaw, and municipal bylaws, as I understand it, are deemed to be there for particular purposes. What we have with respect to subsection 7(1) is what some people might call a quasi-criminal type of legislation and a quasi-criminal type of offence, whereas under a municipal bylaw, that certainly would not be the case.

There are two different rationales, two different goals that are being served, one by a provincial statute with a penalty section, the other by a municipal bylaw. A municipality as I understand it—and I do not know a whole lot about municipal law—has guidelines, limits, on the reasons it can prosecute. It does not necessarily has limits on what it can prosecute, but it certainly has limits on the reasons it can prosecute, and that is where, all over the country, as I recall it, some municipal legislation that was designed to control street soliciting, prostitution, including Niagara Falls, was struck down, because, while certainly the bylaw was there, it was so immediately apparent that the goal that was being serviced—

Mr. Kanter: Mr. Chairman, I do not want to unduly restrict Mr. Kormos. However, I would point out that we are now discussing penalties for breach of a provincial, not a municipal, law—subsection 7(1)—a motion which he himself moved.

Mr. Chairman: I think, Mr. Kanter, although he is referring to the other section, the argument requires a referral to both sections. He is getting close to being out of the ballpark.

Mr. Kanter: That was the observation that I had in mind, Mr. Chairman. You are very astute.

Mr. Kormos: What I am doing, Mr. Chairman, is trying to express—and I concede that nobody else here may share the concern that I have—

Mr. Chiarelli: Not even Howie.

Mr. Kormos: Not even Mr. Hampton. It arises—

Mr. Hampton: Don't listen. Because they do not know what you are talking does not mean the rest of us do not know what you are talking about.

Mr. Chairman: Your pearls of wisdom, Mr. Hampton, are not being picked up for shelving.

Mr. Hampton: I will save them then, Mr. Chairman.

Mr. Kormos: Let me put it this way: Even if it is only Mr. Hampton who understands what I am talking about, it is better than nobody, and that is by a long shot.

Mr. Hampton: Thanks.

Mr. Chairman: That is the best compliment Mr. Hampton has received in a long time.

Mr. Kormos: That is by a long shot. But surely the chair must see the difficulty here, and must have some concerns about whether identical penalties create more problems or, indeed, lessen the problem. Do they serve to distinguish the municipal bylaw from the provincial statute? Are you going to have, by having identical penalties, by having consistency in penalties—and this just came to me as I was—

Mr. Ballinger: Now I know you are dangerous.

Mr. Kanter: Are you supporting this motion or not?

Mr. Kormos: I am cautiously supporting it.

Mr. Kanter: I think we could have defended it a little better, actually.

Mr. Kormos: Caution is warranted for the very reasons that I am speaking of, and that is that if the penalties are consistent, if they are identical, would that not attract a challenge to, let us say, a prosecution under the municipal bylaw, saying, "No, this does not meet the goals of municipal bylaws or service the rationale that a municipal bylaw should address"? Proof of that is that the legislators, in their wisdom, or lack of it, presumably the latter, made the penalties identical. Proof of that is that the legislators opted to make the penalties identical.

Were they simply providing a dual system? Were they, indeed, creating a structure wherein there could be double prosecutions, yet no defence, as you have pointed out, of autrefois acquit or autrefois convict? We have two standards, two goals to be addressed, two entirely different things, yet did the legislators foul up so badly? They have created years of litigation. They have created incredible expense not only to the litigants but to the whole administration of justice. We are talking about litigation that in the first instance can go on for days and days, which would undoubtedly be appealed---

Mr. Ballinger: There are too many lawyers on this committee.

Mr. Chiarelli: Let the record show that the lawyer member for the NDP has a big smile on his face.

Mr. Chairman: I think the television cameras have already picked that up.

Mr. Chiarelli: Obviously there are going to be two prosecutions that arise out of this particular bill.

Mr. Chairman: Go ahead, Mr. Kormos. You have the floor.

Mr. Kormos: You see, that observation alone fuels my concern.

Mr. Chiarelli: I was being sarcastic.

Mr. Kormos: That is unfortunate because the wiser observation may have been that, indeed, it could generate two courses of litigation. We are talking about matters that would be tried initially before a justice of the peace conceivably, especially in the case of a municipal bylaw appealed to a provincial judge, appealed then to a district court and appealed from there to a court of appeal. We are speaking of an incredibly lengthy process, all because we sought out—and I appreciate that in the ideal world, the two penalties would be consistent.

Perhaps the solution is to place the onus for prosecution merely on the province or on the enforcement of the provincial statute itself. Perhaps the whole inclusion of municipal bylaws, even in the original bill, as a means of enforcing, was (1) shifting the cost of enforcement and prosecution unfairly on to the municipality because undoubtedly it is an incredibly high cost, and (2) duplicating modes of prosecution when ideally a provincial prosecutor who would be prosecuting in subsection 7(1) would be a person paid for by the province, as compared to the people who prosecute bylaws, which by and large are local bylaws people—

Mr. Ballinger: There go the bells.

Mr. Chairman: My attention has been drawn to the fact that the House has convened. We are required to convene as well.

Mr. Chiarelli: Will we wind up very soon so that we can get this vote in today?

Mr. Chairman: My attention has been drawn to the bells. This committee stands adjourned until tomorrow after routine proceedings.

The committee adjourned at 5:58 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

TUESDAY, NOVEMBER 29, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Hart, Christine E. (York East L) for Mr. McGuinty

Kormos, Peter (Welland-Thorold NDP) for Mr. Farnan

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Hopkins, Laura A., Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, November 29, 1988

The committee met at 3:50 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 6:

Mr. Chairman: I recognize a quorum. When last we met, Mr. Kormos was discussing an amendment to subsection 7(1) and was in high flight, as I recall. You have the floor, Mr. Kormos.

Mr. Kormos: Thank you, Mr. Chairman.

Mr. Chairman: Are you awake?

Mr. Kormos: Oh, yes. I just sat through a whole bunch of government answers.

Mr. Sola: Answers to opposition questions?

Mr. Kormos: Some good questions.

Mr. Kanter: Perhaps if you were discussing matters with staff, say, it might be officers of the Legislative Assembly or the Ministry of the Solicitor General that you got answers from?

Mr. Kormos: No. Quite frankly, I was having problems with repairs to my car. It has been in the shop since last Friday.

Mr. Kanter: And you spoke to the government about the car place?

Mr. Chairman: This is not a commercial for Corvettes, is it?

Mr. Kormos: It would not quite be called a commercial, would it? I should indicate that I told the dealer that I appreciated that Fridays were not the days when the Legislature sits because that gives me the one day out of the week that I can take my car into the shop, but never on a Sunday.

The concerns that were being expressed were basically as to the duplication of penalties. I acknowledge that the amendment to subsection 7(1) to make it consistent with subsection 7(2) was one that I indicated I would support. Obviously, I have concerns about its overall impact, not just the impact on 7(1) and the appropriateness of the amendment to 7(1), but when referred back to the source of the application of penalty subsections 7(1) or 7(2). I suspect, once again, that 7(3) has to be looked at in due course, because the consideration in 7(3) may be somewhat altered by the amendments that we have made to 7(2) and that we are now in the process of making to 7(1).

But it remains, as I indicated, that I support the amendment at this time, notwithstanding that section 4, for instance, has not been discussed and amendments to section 4 have not been discussed. It is unfortunate. Obviously those were stood down and obviously there are amendments that may well be in the offing now that were not there when 7(1) and 7(2) stood as they did in the original bill.

It seems peculiar to me that the committee would have so rashly rejected a consideration of the amendment which was proposed. They did not have an opportunity to consider the amendment that was proposed. Rather, they supported the chair in its conclusion that the amendment that was proposed with respect to minimum penalties was one that could not be heard because, according to the chair, it had been dealt with on November 8 and November 15 respectively.

If the purpose or the intent of members of the committee is to make this a statute that has real teeth in it—and that would be the purpose of enacting the amendment to 7(2), as has already been done, as well as the purpose in now supporting this amendment to 7(1)—to give it teeth, such that a sentencing tribunal could exceed a fine of \$50,000 if indeed the fact scenario—and of course I am speaking of the quantum of sales—exceeded \$50,000, and that could be dealt with by way of a higher penalty.

It remains that, once again, the mandatory requirement of subsection 3 has to be taken into consideration—and I appreciate it if somebody is liable to say I am not being on point, but the whole section is a penalty section, or at least it is up until subsection 3—because it is one of the things that is going to impact on the imposition of a sentence and it is one of the things that gives rise to a consideration of the hybrid sort of sentence that was finally accepted by way of amendment to subsection 7(2).

Mr. Chairman: Before you continue, the amendment before us, in order to be consistent with the one for 7(2), should read "\$50,000 or" and also should read "the gross sales of," should it not?

Clerk of the Committee: No, "in."

Mr. Chairman: Oh, "in," okay. But it should be "or," should it not?

Mr. Kanter: Yes.

Mr. Kormos: It was pointed out to me that, by virtue of the definition of "retail business establishment," which dealt with the physical premises—and I appreciated that having been pointed out to me—the word "in" was more appropriate and acceptable than the word "of," because it is "retail business establishment" as compared to mere "retail business."

That may be a matter of contention in months down the road, but "retail business establishment" means the premises where a retail business is carried on, presumably the place or the physical premises or the location. It is for that reason that the word "in" was far more appropriate than the word "of." The word "of" would have been appropriate had "retail business establishment" referred to the actual operation, but obviously the act as it exists now refers solely to the physical premises.

Once again, speaking of the maximum penalties and attempting to make subsection 1 consistent with subsection 2, I spoke yesterday of my concern that, on the one hand, we recognize it should be consistent, because there are

clearly scenarios where these two penalty sections are mutually exclusive. That is to say that where a municipality has not enacted a bylaw, any prosecution would have to be under subsection 7(1). Where a bylaw was all-encompassing, and that is to say where the effect of the bylaw—

Mr. Chairman: Go ahead. You do it through the chair, but I am really just neutral here. You are speaking to those people there.

Mr. Kormos: I understand that, Mr. Chairman, but again, there is the prospect of somebody commenting on what I have said and the chair not having been able to—

Mr. Chairman: Okay, just one second.

Mr. Kormos: Thank you.

Mr. Chairman: Go ahead.

Mr. Kormos: So those are the two scenarios where the two subsections are mutually exclusive, but there are no guidelines here for the municipality as to what it may or may not do. There are basically no restrictions. There are clauses (a) to (e) under subsection 4(4), which say all the things a municipality may do in its bylaw, but there are obvious scenarios wherein a municipality could enact a bylaw where the effect would be to have an overlap, and that is to say where there would be a scenario created where an offence could be simultaneously committed under the bylaw and under the statute.

Of course, the bylaw would be the product of a decision of the city council and the statute here is the result of consideration by the provincial Legislature.

1600

That was the concern I was trying to address yesterday, especially when the penalties are consistent—or, rather, not just consistent; consistency is one thing, but being identical, as we have here, is something far different. What I am suggesting is that that may lend a colour or a tone to the legislation when there is a matter of overlapping, when there is a matter of concurrency, so that there could be confusion about which has prevalence. This is why I raised section 4 yesterday. The consideration of section 4 is relevant to what we are speaking of now.

So as I say, I support the amendment, but with some caution.

It would seem to me that if there were to be a hierarchy of offences— That is to say, to acquire consistency, we do not have to make the amount of the penalty identical. Consistency would be encompassed by merely creating the hybrid penalty that is in subsection 7(2), by creating, in the instance of subsection 7(1), let's say a minimum penalty. It would still be consistent with subsection 7(2), because what was being sought in terms of consistency was the matter of there being this maximum penalty that is flexible, depending upon the amount of sales that were made on a given day.

The bill as it stands creates scenarios where there could be a choice as to prosecutions. That becomes all the clearer when both penalty provisions are identical under the bylaw or under the provincial statute. It is bizarre, of course, that a government member should have moved the amendment to subsection 7(2), which would remove power from the municipality, when it would—

Mr. Chairman: Excuse me a second. Okay, go ahead.

Mr. Kormos: On the one hand, there is an explanation or rationalization of this bill, that it is a matter of giving municipalities freedom to determine what happens within the municipality, then on the other hand there is an amendment to subsection 7(2) by a government member of the committee that gives and yet takes away so rapidly. It says a municipality can decide to do certain things. It is surprising that the government member would do that.

I can envision a scenario wherein a member of a council might say, "Under normal circumstances, we might be persuaded by owners of a big shopping plaza or by Cadillac Fairview or what have you to enact this legislation." That would be about the only source of lobbying or pressure or suasion that would come upon a municipal council, because surely it is only those types of people who are going to prosper or profit from wide-open Sunday openings.

My goodness, if we enact any sort of bylaw, if we enact a bylaw that only minimally expands on the opening rights as they exist in the Retail Business Holidays Act, we are necessarily required to enact a penalty section as prescribed in subsection 7(2). If the purpose of a municipal bylaw is to provide for the vaguest of exceptions to square footage requirements and create an offence which would be the most minimal type of offence, even in the minds of the municipal legislators, they necessarily have to incorporate a penalty section in their bylaw which requires the penalties we spoke of in the amendment to subsection 7(2) and the amendment to the amendment.

That is a really incredible scenario, especially to have been proposed by a government member of the committee, because if anything, that would certainly create a scenario where someone who committed what by virtue of the bylaw itself was a trifling offence, would be facing maximum penalties—even, for instance, in a violation where no sales took place—because of the power given to a municipality in section 4 to do really any number of things and any sorts of things. Clause 4(4)(e) especially talks about the power of the municipality by bylaw to intrude—that might be an inappropriate word—to establish its bylaw or create its criteria for prosecution or its criteria for an offence; for instance, the "number of persons employed." That clearly goes well beyond basically the minimum rights accorded to people who legitimately are open on Sundays now, have been open on Sundays for many decades and have relied on that.

A bylaw may apply to any part or parts of the municipality or territory. Without any guidelines there could indeed be virtually a capricious exercise of the municipality's power, such that the area of the city in which three businessmen who are members of the municipal council carry on their businesses—or the contrary—and onerous penalties are provided, because the creation of the bylaw permits the municipality to create the most insignificant of offences, yet denies it the power to control the quantum of penalty and indeed says "any contravention...of a bylaw."

Perhaps the saving grace there is the requirement in subsection 7(3). Perhaps then a court would be compelled to look at subsection 7(3) and consider that if sales were minimal or if they were nonexistent, then a violation would not be deemed a serious one. But there is nothing in subsection 7(3) that states that the consideration of sales is the only consideration a court should make. It would probably be bizarre or absurd to have that type of wording in subsection 7(3). I recall talking about this last week. It merely indicates that the requirement is mandatory, that is to say that the judge "shall take into consideration."

Perhaps I can get some advice in this regard. Is "sales" defined in the existing statute or in the bill anywhere?

Mr. Chairman: The term "retail sales" is, I think.

Mr. Kormos: It says "sell or offer for sale any goods or services therein by retail."

Mr. Chairman: I think you have our only copy. We are on a limited budget in this committee.

Mr. Kormos: That was a start, Mr. Chairman.

Mr. Chairman: Because we have travelled far and wide.

Mr. Kormos: I am told; I have read.

It is relevant here. Is there any precedent on what constitutes "sale or...services therein by retail"? I do not understand that, because it is hard for me to understand services in the areas of retail and wholesale.

1610

Mr. Chairman: I have allowed you to stray.

Mr. Kormos: I appreciate that, but I am trying to make a point.

Mr. Chairman: I appreciate that, but I think that is probably a point that can be made when we get to subsection 4(1), as I indicated yesterday. I think you are outside of it now. I am going to have to call you back into the fine provision.

Mr. Kormos: Okay. I guess I have to rely on the committee to permit, once again, a reopening in the event that we have failed the goal of achieving the intent of the legislation by making it consistent. In the total scheme of things, a violation of a provincial statute somehow, to me, should bear with it more opprobrium than a violation of the municipal bylaw. Maybe the consistency can still be achieved by creating the hybrid penalty, but I am wondering if a more appropriate thing might be to create a fine with a maximum of \$75,000 or gross sales, whichever is the higher.

Mr. Chairman: Surely sentencing is within the discretion of the presiding justice.

Mr. Kormos: It is a discretion, but there should be guidelines. That is one of the problems I suspect judges have, along with a variety of others. There should be guidelines. A statute should contain some direction in a sentencing provision. Mind you, the drafters of this tried to do that with subsection 7(3) and admirably so. I quite frankly will leave it at that.

Mr. Kanter: I just want to indicate that I agree with Mr. Kormos in one respect only. That is, I will be supporting his amendment with some reservations. The view has been expressed that this type of motion might be interpreted by the police in a way that would suggest they have to undertake lengthy investigations into evidence of sales in all cases or might be viewed perhaps by crown attorneys in the same way.

There is some concern that it might have the effect opposite to that

intended, that it might discourage prosecution or enforcement. I am sure that is not Mr. Kormos's intent. We heard information from legislative counsel yesterday that this type of motion would not have this negative effect. On balance, I think it appears at this time that the motion would be consistent with the government's intention to strengthen enforcement of the act, to be very tough on breaches of the act. Therefore, on balance, I will be supporting it; however, with the reservations I have outlined.

Mr. Kormos: In view of what Mr. Kanter just said, can he explain why—once again, these considerations were made back on November 8 and November 15—there was not a successful consideration of minimum penalties?

Mr. Chairman: We are not going to reopen that.

Mr. Kormos: It is not going to be reopened. I really would like some insight into that, in view of what Mr. Kanter just said.

Mr. Chairman: Well, all right.

Mr. Kanter: Mr. Kormos was not here, but our legal adviser from the ministry spoke at some length and Mr. Spring and I believe also Mr. Ritchie, about the problems minimum sentences created or provided. I think you raised some concern yesterday or at another meeting of this committee, Mr. Kormos, about the small operation. These are some of the issues that were discussed by the staff. I would just repeat that two motions on minimum fines were discussed at some length and defeated, on advice from impartial staff. I do not think that is the subject under discussion at this time. I think that was canvassed very thoroughly and rejected by this committee at a time before Mr. Kormos was a member.

Mr. Kormos: Thank you, Mr. Chairman. I wondered whether section 60 of the Provincial Offences Act was considered at the same time. Somebody is shaking his head. It appears that it was not. It is unfortunate, because it would have been most valuable to the committee.

Mr. Chairman: I do not think any one of us carries around sections in his head. As to what section 60 says—

Mr. Kormos: I did not know what it said either until I—

Mr. Chairman: The only one I ever remember is section 58 of the Conveyancing Law and Property Act.

Mr. Kormos: I did not either until, when I looked it up, I discovered that it permits a sentencing judge in a provincial offences trial to—

Mr. Chairman: Discharges, is it?

Mr. Kormos: No, but basically to ignore the minimum penalty and, under exceptional or compelling circumstances, very broad-ended, to impose a penalty that is lower than the minimum sentence or minimum penalty. I would have thought that—

Mr. Chairman: I have never seen that section, because there is a minimum penalty under failing to have insurance.

Mr. Kanter: On a point of order, Mr. Chairman: It seems that Mr.

Kormos is trying repeatedly to resume discussion on a matter that was debated twice and defeated by this committee. I would urge you to confine discussion to his amendment to subsection 7(1) of this act.

Mr. Chairman: I think that point of order is well taken, Mr. Kormos.

Mr. Ballinger: The rookie excuse won't work today, Peter. I am just pointing that out to you.

Mr. Chairman: Is there any further discussion by members of the committee or are we ready to proceed with this matter? Going once, going twice, going three times. Hearing no requests, we are ready to vote. The question has been called.

Those in favour of the amendment to subsection 7(1) please signify.

Those opposed?

Motion agreed to.

Mr. Chairman: The next amendment we have before us—

Interjections.

Mrs. Cunningham: I seem to have arrived somewhat late.

Mr. Chairman: Welcome back. It is nice to see you back.

Mr. Ballinger: That is the best news we have had all day.

Mr. Chairman: Has anybody seen the clerk?

Mrs. Cunningham: I see things haven't changed, Mr. Chairman.

Mr. Chairman: I believe the next amendment was a New Democratic Party motion.

Mr. Kanter: I have a Conservative motion, an amendment to clause 7(2)(a) which—

Mr. Chairman: We passed that, I think, did we not?

Mr. Kanter: —I thought might logically precede it. Have we passed the one that, I think, was originally by Mr. Runciman about coercion, requiring and counselling—

Mr. Chairman: No, we just got that.

Mr. Kanter: That would be the next logical motion.

Mr. Chairman: That was just given to us a few minutes ago. Here it is, the motion by Mr. Runciman. I gather you will support this, or be the mover of this motion in the absence of Mr. Runciman?

Mrs. Cunningham: Yes.

Mr. Chairman: Mrs. Cunningham moves that section 7 of the act as set out in section 6 of the bill be amended by adding thereto the following subsection:

"(2a) Every person who coerces, requires or counsels another person to contravene section 2, a regulation under section 4 or a bylaw under subsection 4(1) is guilty of an offence and on conviction is liable to the same fine as is provided for a contravention of section 2, the regulation or the bylaw, as the case may be."

Mrs. Cunningham: Mr. Runciman has gone to the House to be part of the emergency debate. He did say that he wanted to speak to this. I am not sure how that affects the process.

Mr. Chairman: Do you know how long he will be?

Mrs. Cunningham: He assured me he would be back within five minutes.

Mr. Chairman: I think the amendment is pretty obviously there and perhaps we will ask if any other members wish to speak to it. Then, when Mr. Runciman comes back, he can speak to it as well if he wishes.

Do any other members wish to speak to it?

1620

Mr. Kanter: We will be speaking to it very briefly, Mr. Chairman. I am not sure I can spin it out for five minutes, but we will be supporting this motion. It is similar to a provision in Bill 184, which was moved by the Attorney General (Mr. Scott) but unfortunately died on the order paper, which stated in section 3 that "no person carrying on a retail business in a retail business establishment, and no person acting on behalf of such a person, shall counsel or require any person to contravene subsection 2."

This was one of the provisions in An Act to amend the Retail Business Holidays Act that was introduced by the Attorney General last year, just prior to the Christmas season. Unfortunately, as I said, it—

Mr. Chairman: Last year, prior to the Christmas season?

Mr. Kanter: Yes, I think that was last year prior to the Christmas season.

Mrs. Cunningham: Time flies when you're having fun.

Mr. Kanter: As you will recall, there were some problems with the enforcement of the legislation, which this government is attempting to remedy with this current bill. I do not know whether Mr. Pope was influenced, consciously or otherwise, by the initiative by the Attorney General, but we feel this amendment by the Conservatives, by Mr. Runciman, is certainly consistent with the approach taken by the Attorney General and consistent with the bill, and would again, on balance, strengthen enforcement of the Retail Business Holidays Act.

Again, as I stated in our discussion of the previous section, better, stricter, tougher enforcement of retail business holidays legislation is one of the primary intentions of the government in the passage of this amendment to the act.

While we support this amendment introduced by the Conservatives, as we have supported several amendments introduced by the New Democrats, to strengthen the enforcement provisions of the bill, we, of course, look forward

to the eventual passage of the legislation, which will provide a package which, as a total, provides much stronger, tougher enforcement of our legislation in this regard.

So we will be supporting this motion and we hope that we can proceed towards the eventual passage of the legislation, in order that these sorts of objectives set out by Mr. Runciman in his amendment will ultimately be met.

Mrs. Cunningham: In Mr. Runciman's absence, and in the interests of keeping the committee moving onward, given the comments that Mr. Kanter has made, I suppose one of the great concerns of the Progressive Conservatives for the existing legislation was, and we agreed with the Liberal government, the problem of enforcement.

I think the part that we were most concerned about was the fine, which we are dealing with now, I understand, in this committee. Anything that we can do, of course, to assist with the enforcement of existing legislation and make it more meaningful, on behalf of the public, is something we are very much interested in doing and thus the motion as put forward today.

I would, however, like to make our position quite clear. It is that the present Retail Business Holidays Act, we think, is working, with a few exceptions. This would be one of the very few exceptions we see as a problem in that act. Although we are putting this motion forward in the interests of reality—that is, we recognize the tremendous majority government here at Queen's Park—on behalf of the Liberals, we are trying to assist wherever we can in making this pending piece of legislation more meaningful to the public, given that we expect that it will be forced through the House in the very near future.

So I want to make our position quite clear. We do support the existing legislation. We would, of course, have put this amendment to that particular piece of legislation. We are finding ourselves putting it to this Bill 113, looking at the practicality of what probably will happen to this bill.

With that statement, I appreciate the support of Mr. Kanter. I hoped that Mr. Runciman would be back at this time, but I believe he would probably support the statements I have made on his behalf.

Mr. Kormos: I had wanted to be able to ask Mr. Runciman about the purpose of the amendment. I would think in the interest of fairness—even for those people who may, at first glance, propose to support this—it is important that we understand the intent of it, is it not? Really, that is an opportunity for the draftspeople here. It appears to be one thing, but is it not important for the person moving it to speak to us so that we understand what that person intends, so that if there has to be some tinkering or some fine-tuning, it is done by the draftspeople available?

I appreciate what Mrs. Cunningham is saying, but I am concerned about not hearing what Mr. Runciman intended by what he prepared in the way of an amendment.

Mr. Chairman: I think, unless Mrs. Cunningham has changed her mind as a result of your eloquence, she has indicated that she felt she could speak for Mr. Runciman and say what he would have said.

Mr. Kormos: I have no quarrel with the fact that Mrs. Cunningham can rightly say that Mr. Runciman would support this amendment. What I am

saying—and it hardly warrants speaking on—is that I think it is important, for not only myself but the whole committee, to understand what Mr. Runciman intends by this amendment, what is his intent. It says one thing. I think it is important for us to understand whether the actual wording of it, because none of us in the committee—I cannot speak for Mrs. Cunningham—

Mr. Chairman: Maybe we should ask Mrs. Cunningham what she has to say to that.

Mrs. Cunningham: I think Mr. Kormos raises an interesting point. I think it has been our practice to stand it down until the person comes back. It will not take that long, I am sure.

Mr. Kormos: I will help look for him.

Mr. Chairman: I think we know where he is.

Mrs. Cunningham: I think if we turned our monitors on we would know exactly where he is right now.

Mr. Chiarelli: He is in the House—

Mr. Chairman: I believe that to stand it down we require unanimous consent. Is that not right, Madam Clerk?

Clerk of the Committee: Yes.

Mr. Chairman: Yes, we require unanimous consent. We will then inquire if there is unanimous consent to stand it down. Is there unanimous consent to stand it down?

Mr. Kormos: Until Mr. Runciman gets here?

Mrs. Cunningham: Yes, just until he comes.

Mr. Chiarelli: For how long?

Mr. Kanter: I am just not clear on what the committee is going to do until Mr. Runciman comes.

Mrs. Cunningham: Move on to something else.

Mr. Kanter: We are going to move on to another?

Mrs. Cunningham: Sure.

Mr. Chairman: The next motion is a New Democratic Party motion, 6a(1).

Interjection: There is someone coming but it does not look like Bob Runciman.

Mr. Chairman: No, it is not Mr. Runciman. Shall I put it again? Is there unanimous consent that we stand the matter down? Could you signify, please, if there is unanimous consent?

Mr. Kanter: Yes.

Mr. Chairman: Are there any nays? No nays.

All right, there is unanimous consent.

Mr. Ballinger: I have things to say but I guess I'll just keep them to myself.

Mr. Chairman: We will stand that matter down until Mr. Runciman is finished in the House. Would it be agreed that we resume that when he returns from the House? All right. The next motion we have before us is a New Democratic motion. I am not sure who it is moved by.

Mr. Kanter: Could I move a point of order at this point?

Mr. Chairman: Yes.

Mr. Kanter: I have had an opportunity to look at the NDP motion. There may be a question whether it is in order. I do not intend to debate that at this time. If it is found to be in order, it could elicit rather wide-ranging debate dealing with the establishment of a committee to consider the merits of the policy and objectives of this act. I notice that we had the presence of Mrs. Cunningham today in the committee and I know that she has had a very long-standing interest in one of the other contentious areas remaining with respect to this legislation; that is the drugstore clause, section 3.

I suggest to you, Mr. Chairman, that we consider standing down the NDP motion on this clause, just as we have stood down the Progressive Conservative motion with Mr. Runciman absent, in order that we can go to section 3 which deals with drugstores.

1630

Mr. Chairman: We have lost Mr. Kormos. Are we standing down, then, everything to the end of the bill and reverting back to section 3?

Mr. Kanter: That would be my suggestion.

Mr. Chairman: Mrs. Cunningham, is there unanimous consent to do that?

Mrs. Cunningham: Yes.

Ms. Collins: Just before we move on, some members of the committee do not have the NDP motion that was being referred to.

Mr. Chairman: Copies will be distributed to you.

Section 3:

Mr. Chairman: The first amendment to section 3 is a government motion. Could we stand in recess for five minutes?

The committee recessed at 4:32 p.m.

1643

Mr. Chairman: I recognize a quorum. We are just about to deal with the government motion to subsection 3(1), but before that, I should indicate to the committee that, as chairman, I am in receipt of a letter from Gerald

Vandezande, signed on behalf of the policy development committee of the Ontario Working Group on Sunday Shopping Policy. A copy of that has been given to each of the members, and I think they have had an opportunity to peruse it.

If we go back to our research that we instructed Susan Swift to perform, we had an option of either a consultant or our research branch looking into the matter. We decided—I think it was unanimous by the committee—that we would have Susan do it through the Legislative Research Service.

I am asking for unanimous consent that we might have the clerk and Susan prepare a reply to the letter, dated November 29, 1988, from Mr. Vandezande, to be available for the committee's approval on either Monday or Tuesday of next week. Do I have unanimous consent to that?

Agreed to.

Mr. Chairman: We are now at subsection 3.

Mr. Kanter moves that clause 3(2)(c) of the act, as set out in subsection 3(1) of the bill, be amended by striking out "5,000" in the last line and inserting in lieu thereof "7,500."

Mr. Kanter: I do not think there has been any issue that has had more discussion in this committee than the size of drugstores, and I think this is something the minister certainly anticipated. When she made her opening comments to this committee, she indicated that the principle, which most people agree with, that we should have drugstores able to sell prescription goods on Sunday was one generally accepted. There were concerns from citizens and other law-abiding merchants about many very large stores opening up, having small prescription counters and staying open, that they felt were in unfair competition. The fact of the issue of exactly where to draw the line was one that the minister put squarely in the lap of this committee.

It was one that we heard a great amount of evidence and testimony about in virtually every community we went to, and we travelled, of course, to 14 communities in Ontario. We heard evidence about drugstores, their sizes and services and the percentage of time and space devoted to prescription drugs.

I would say, first, I think there is also some consensus that the current law has some problems in this area by setting a limit on the number of staff rather than the gross floor area. The number of staff is extremely difficult to enforce. We have heard again and again that it is a very difficult factor to enforce, so I think the principle of a gross floor area measurement, something that is easily enforceable, is one that has general agreement among all members of the committee.

The issue of exactly where to draw the line, at what square footage, has been a difficult one to resolve. I certainly commend the efforts of our research staff, Susan Swift in particular, who did exhaustive research, probably the most that has ever been done on drugstores in the province. While the government initially felt that 5,000 square feet was adequate, based on that research, we have changed our position and, therefore, we are supporting the figure of 7,500 square feet.

I remind members of the research that was done. I believe the pages are numbered, but some distance on in the report that Susan Swift did there is a square-footage breakdown of all of the drugstores that she could find in the

province, and it appears that about 95 per cent of them fit under the 7,500-square-foot figure.

We also heard from a number of merchant groups. I remember one in particular—I believe it was representing a number of grocery store owners—that said it could tolerate drugstores up to 7,500 square feet being opened. If there were any openings beyond that amount, they would feel compelled to open, regardless of what the law said. So I think there is a considerable amount of support for the government position that the reasonable figure to allow drugstores to be open would be 7,500 square feet.

I have to admit that 7,500 square feet was not absolutely unanimously supported. There were those who said that the 7,500-square-foot figure was too small.

We had a number of presentations by Shoppers Drug Mart Ltd. franchisees who own stores larger than 7,500 square feet and have been serving their communities for many years who argued that the figure should be larger, perhaps 10,000 or 12,000 square feet. I remember one in a northern community, in particular, whose store was around the 10,000-square-foot mark.

We also heard from Zel Goldstein on behalf of Hy and Zel's, who argued for a larger restriction, or perhaps no restriction at all.

We received and read representations from the Ontario discount drugstore association, which the Hy and Zel's group is a part of, that again argued there should be no restriction, or a much larger restriction.

On the other hand, we have had some submissions, including one that we received today, very late in the process, but one that nevertheless I consider quite seriously, from the Ontario Working Group for Sunday Shopping Policy. They argue against the government motion, the position of 7,500 square feet. They argue that it would be too large.

I think we have tried to choose the best figure, the most appropriate figure. This is obviously a question of trying to find the right balance. What we have tried to do is to ensure that prescription drugs in particular and related over-the-counter health potions are generally available on a seven-day-a-week basis. About 95 per cent of the drugstores in the province will be able to continue to be open. The 95 per cent obviously includes, by far, the greatest number.

1650

I think it would be appropriate if I could give notice of the second motion that I will be moving. I do not want to debate it extensively, but the purpose of that motion will be to allow larger drugstores, be they 7,600 square feet, 10,000 square feet or 40,000 square feet, a one-year grace period to stay open during which time they can either reduce their size to the 7,500 square feet and stay open or apply to their local council for permission to stay open if they choose to do so or, at the end of that one-year period, be closed.

We are attempting to be fair to everyone from the very small family-owned drug stores, which will be open if they choose to do so—most of them have not, but they can stay open—to the, I guess, medium-sized Shoppers Drug Mart store, the Big V or the various chains, most of which are under 7,500 square feet and most of which will be able to stay open. Any store

larger than 7,500 square feet will be able to open for a period of one year, during which they have to make alternative arrangements.

We do not think it would be reasonable to allow the status quo to prevail in this situation. This is one of the areas where, I think Mrs. Cunningham would concede, there are some problems with the current law. We are trying to introduce a measure that will be more fair and more enforceable. I hope that members of the committee will consider our amendment in this case and hopefully support it.

Mr. Chairman: I understand that Mrs. Cunningham has an amendment which we should hear first. We will deal with that, since it is an amendment to your amendment. Copies of it are being made at the moment.

In fairness, the letter of November 29 that I distributed to you requested that I give to each member of the committee a copy of the submission, which I have done, and also, you will note, presented their request for an early meeting with them. We of course have refused to hear any other deputants in light of the fact that the deputations had been completed before. I assume that, with no one raising the issue, we have general agreement that there will not be further submissions to us. Is that agreed?

Mr. Kanter: Agreed.

Mr. Chairman: Agreed, Mr. Kormos?

Mr. Kormos: I, like everybody else, have picked up only anecdotally in what I have read in the papers about the travelling team that this group constituted when they were on the road. Perhaps those people who are supportive of your suggestion would indicate to me why they would be reluctant to hear submissions at this point.

Mr. Chairman: Let me clarify something. It is not my suggestion. I am simply doing what the letter asked me to do. I am asking you whether or not you wish to accede to such requests, but also recognizing that there was at least one other group that asked for permission to come before us after the—in fact more than that, because there were lots of them on the list that were never even heard, but their requests, which we certainly were prepared to accept and to consider, were given to us in writing. All I am saying is it is up to the committee what you do. If you wish to leave it, that is up to you. I am asking for some direction from the committee members.

Mr. Kanter: On a point of order, Mr. Chairman: There was unanimous consent to go to subsection 3, which we did. I thought that the government motion was the first one logically to consider, which we are. You then indicated that Mrs. Cunningham had an amendment to my motion. I have not seen it. I look forward to looking at it. It seems to me that we are in midst of discussing a clause, an amendment to that amendment. I look forward to seeing it and debating it. It seems to me that is the business that we are currently undertaking, unless Mr. Kormos has some other direction he wants to go off in. I think that would require the consent of the committee.

Mr. Chairman: I think your point of order is well taken. It is not Mr. Kormos's fault. It is perhaps the chairman's fault in entering upon that issue, but we do have Mrs. Cunningham's motion, which I will read.

Interjection: I am perfectly happy to debate that.

Mr. Chairman: Mrs. Cunningham moves that Mr. Kanter's motion to amend clause 3(2)(c) of the act be amended by striking out "7,500" and inserting in lieu thereof "10,000."

Mrs. Cunningham: We find ourselves in the position again of my having go up and speak in the emergency debate in the House. However, Mr. Runciman has returned and it may be in order for him to speak now to the motion that was stood down a few minutes ago. I really would like to have an opportunity to speak to my amendment, but I am on in five minutes upstairs. If you will excuse me, maybe the committee would go back to—

Mr. Chairman: Before you go, I will inquire: Is there unanimous consent to revert to the motion that we stood down because Mr. Runciman was speaking in the House?

Mr. Kanter: Yes.

Mr. Chairman: Mr. Kormos, unanimous consent?

Mr. Kormos: Yes.

Agreed to.

Section 6:

Mr. Kanter: We will have to change gears to find it.

Mrs. Cunningham: We are changing gears as well.

Mr. Chairman: Did we not deal with—no, we did not. That was the one on coercion. Mr. Kormos wished to give you, Mr. Runciman, the opportunity to express to the committee your intentions behind your amendment 7(2a). We have unanimous consent. We reverted to that. We will now give Mr. Runciman an opportunity to speak to his intention.

Mr. Kanter: We said we would support it, Bob, so you can be brief.

Mr. Runciman: Did I hear the parliamentary assistant right?

Mr. Kanter: We said we would support it, so you can be brief.

Mr. Chairman: That is what was indicated last time.

Mr. Runciman: This is unprecedented.

Mr. Kanter: I hope you heard both parts.

Mr. Runciman: Three in a row, I think it is. More than that.

Mr. Kanter: We are always very amenable to good, positive suggestions.

Mr. Chairman: Sometimes speaking in the House can have an amazing—

Mr. Runciman: Okay. Mr. Chairman, as you may or may not be aware, this was really drafted with the assistance of committee counsel at the suggestion of my colleague from Cochrane, I think it is. No, it is not Cochrane, is it?

Mrs. Cunningham: Timmins?

Mr. Runciman: Mr. Pope. Looking at the rationale of it, I must admit to Mr. Kormos and the other members of the committee that I was made aware of the amendment yesterday but did not have an opportunity to discuss it with Mr. Pope, although certainly at first blush it appears to be a very reasonable initiative on his part and Mr. Kanter has indicated that the government members feel much the same. I think that Mr. Pope is drawing this from other legislation where he felt this was a proviso that would perhaps cover an area that had not been considered by the drafters of Bill 113.

Mr. Chairman: They are back.

Mr. Runciman: Pardon?

Mr. Chairman: They are back. You have never seen Poltergeist, obviously. Go ahead.

Mr. Runciman: No, I have not; sorry, Mr. Chairman.

Perhaps some of the members of the committee could relate to this more than I in terms of areas that have created difficulties in other pieces of legislation and in other activities that the government has involved itself in.

I suspect Mr. Pope is directing this amendment at, for example, the owners of malls, large chain operations, who may be applying pressure on their tenants to take steps which the tenants themselves would be unwilling to take and we find unattractive for a variety of reasons, but under the pressure of cancellation of leases and a variety of other punitive measures that may be available to landlords in situations such as that, they are compelled, in their view, in any event, to break a given law. I think Mr. Pope immediately recognized that as a weakness in the bill before the committee and has tried to address it.

1700

I guess if Mr. Kormos has other concerns upon reading it, I would certainly like to hear his views and perhaps respond to them as best I can. It may indeed involve an opinion from legal counsel, as well, in respect to the implications of this amendment and what, indeed, we are trying to achieve. But I would like to certainly hear Mr. Kormos's comments.

Mr. Kormos: Once again, this obviously was drafted before the amendments were made to subsections 7(1) and 7(2), such that this adopts the penalty provisions of 7(1) and 7(2). It was done without being aware that we were going to create those hybrid penalty provisions.

Mr. Runciman: You are right.

Mr. Kormos: It would appear, as well, to fall somewhat outside of the scope of consideration under subsection 7(3) because obviously an offence here occurs by virtue of, let's say, the counselling, even though it may not necessarily be successful. Similar is the coercion which may not be successful and the requirement which may not be successful.

So I would move an amendment to the effect that this provision, having entailed within it its own penalties, have included in this subsection its own penalty provisions, and that is to say a maximum fine of \$50,000 and a minimum fine of \$500—

Mr. Chairman: No, I do not think so.

Mr. Kormos: Why, Mr. Chairman?

Mr. Chairman: We are back to minimum fines.

Mr. Kormos: Oh, no. We are talking about an amendment. This amendment moved by Mr. Runciman was not even in existence back when Mr. Philip moved his amendments on November 8 and November 15, respectively. This did not exist by virtue of being a moved amendment.

Mr. Runciman: Mr. Chairman, could we hear Mr. Spring's views on that area, especially in relation to the original amendment that counsel has drafted and the fine portion of that amendment? I guess I am a little confused in respect to what this means and what Mr. Kormos's concerns are. Perhaps Mr. Spring or committee counsel could address that issue.

Mr. Chairman: If you are looking for the meaning of the wording or the adequacy of the wording, I think we would refer it to legislative counsel.

Mr. Runciman: Mr. Kormos is suggesting an amendment to the amendment to have specific fines.

Mr. Chairman: Different from subsections 7(1) and 7(2).

Mr. Runciman: Yes. He is talking about the fact that this amendment was drafted prior to the changes that we approved yesterday in respect to fines and penalties. I am not really clear on what impact that has on this particular amendment because the wording is "the same fine as provided for a contravention of section 2." I would like to hear some clarification in that area.

Mr. Kormos: Could I expand a little bit? Mind you, it is a friendly amendment to your amendment, Mr. Runciman. It is clear. The logic behind the penalty provisions in subsections 7(1) and 7(2) is clear. In particular, the logic of Mr. Philip's amendment to the amendment to 7(2) is even more logical and even clearer, appreciating that subsection 2(1) indicates that you shall not sell or offer for sale or even admit the public—even if nothing is being offered for sale, the public cannot be admitted into a retail business establishment on a holiday, as I read it. So be it, but the logic behind using gross sales as a ceiling for fines was the presumption that people are going to sell something, otherwise they would be disinclined or ill-inclined to consider opening on a holiday. Their motive for opening is to sell something or to offer something for sale, so presumably there are going to be sales.

As I say, when the amendment to the amendment was made to subsection 7(2) including gross sales as a criterion for establishing a ceiling for establishing a maximum offence, here this offence can be committed without there being any sale, without there even being an opening on a holiday. In my view, this should have an independent penalty provision, I would think a maximum \$50,000, minimum \$500.

The reason there should be a minimum is because we are talking about a far more distasteful act being committed here than merely opening on a Sunday. We are talking about the very sort of thing that we who quite frankly have opposed wide-open Sunday shopping have really been addressing our attentions to: the prospect that people are going to be forced to work on Sunday. Come hell or high water, that is the inevitable result of this legislation.

The coercion may be more subtle than it is overt and, undoubtedly, there is difficulty in enforcing existing employment standards legislation and so on because of the opportunities for employers. At the very least, they are the ones with the upper hand, they are the ones who keep the records and maintain a heavy hand over employees.

This particular offence, again, is one which basically takes an innocent person and submits them to pressures, to influence, to persuasion which compels them or leads them to commit an offence for which they can become liable under subsection 7(1) or 7(2). This is the most distasteful of all the offences that are contemplated by the statute. This is the one that really goes to the heart of the issue. My goodness, if anything warrants a minimum penalty, this certainly does.

As I say, it has to be independent of the penalty sections in subsections 7(1) and 7(2), because we are dealing here with a scenario where the offence can take place over the phone without ever resulting in any sales or in any business opening. We are talking about a store owner who phones an employee on Saturday night and says: "I want you to go open the store tomorrow. You have the keys. I want you to go to work tomorrow. Forget about going to church. Forget about spending time with your family. Forget about the commitment you made to visit a sick grandparent or to share the day with your spouse and your young children. I want you to go and open the store tomorrow. Quite frankly, if you don't do it, you'd better start looking for another job on Monday."

The offence, then, as I read it, is completed. The offence is committed once the store owner, once the person who is making the profits, has done that. There is coercion there to commit an offence. There is counselling to commit an offence. There is a requirement to commit an offence.

Mr. Kanter spoke strangely of the difficulties of enforcement of the existing statute, yet quite frankly there is nothing about the bill that alleviates whatever difficulties there are in enforcement. If anything, the bill generates even more difficulties in enforcement. Right now, I am attempting to address why I would make the amendment, and to the question of what in itself is a good amendment to the bill as it stands now.

1710

Mr. Chairman: Thank you.

Mr. Kormos: No. I am sorry, Mr. Chairman.

Mr. Chairman: There was a pregnant pause there and I thought I would jump in.

Mr. Kormos: Mr. Kanter also spoke of legislation that needs teeth. He spoke of his motive for the amendment to 7(2) where the effect of that amendment is to deny the municipality the discretion which the act would purport to give it in the first place. So in that respect, I guess, there is some sucking and blowing going on, because on the one hand, as I say, the government would purport to give municipalities all this discretion and all this power. On the other hand they say, well, no, and Mr. Kanter said, no, the reason for his 7(2) amendment was to give the law teeth to make sure, if there were a violation of the law, that the penalties were there, that they were onerous penalties, and that they would have an impact.

We are dealing here with an offence that would, in my view, be far worse, far more unattractive and far more distasteful than the offences set out in subsection 7(1) or in the bylaw that is contemplated by section 4; and this offence calls out for a minimum sentence.

Briefly, Mr. Kanter suggested to the committee that the reason the committee did not accept minimum sentences in the instance of 7(1), basically 7(2) amendments, was because of the fact that there might be a trifling violation; that there might be a violation that warranted something less than the minimum sentence. It might be so technical, so marginal that it would not warrant the imposition of a fine. Now, mind you, back on November 8 and November 15, the minimum fine was \$1,000 and then it escalated from there.

It appears—and as I say I had to go and look it up—that the Provincial Offences Act relieves this committee of that consideration, because the Provincial Offences Act, section 60, says in subsection 1, "No penalty prescribed for an offence is a minimum penalty unless it is specifically declared to be a minimum."

Subsection 2, far more important to this consideration, reads, "Notwithstanding that the provision that creates the penalty for an offence prescribes a minimum fine where, in the opinion of the court, exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interest of justice the court may impose a fine that is less than the minimum or suspend the sentence."

The purpose of creating a minimum fine is, once again, to reinforce the seriousness of the offence. We have done that on the one hand. I would submit here that an appropriate upper level or maximum penalty—talking about consistency—could perhaps be \$50,000, because it is foolish to incorporate the penalty provisions of 7(1) and 7(2) because they talk about all gross sales.

Here, to reflect the overall greater seriousness of the offence—and the purpose of a minimum fine is to demonstrate that—there has to be a minimum penalty. It is there to reflect that, barring consideration of subsection 2 of section 60, no sentencing judge or justice of the peace will fine less than \$500. It does not give an absolute discretion to a sentencing judge or justice of the peace to slip under the minimum because there is a standard established in the act—"1) Where to impose the minimum fine would be unduly oppressive"—and that would encompass any number of things. That would encompass the trifling offence, the marginal offence, the merely technical offence. That would encompass the grossly indigent accused.

The second criterion, and these are alternative criteria, is "or not in the interests of justice." That would entail, let's say, the test case, the person who wanted to test the legislation to see whether what he or she was doing constituted an offence, where it was wide open. There was nothing heinous, nothing malicious about their conduct. Their conduct was a genuine, sincere effort to determine something. "Well, these statutes are pretty vague. This bill that has been turned into a statute, this new act, is a horror show. My God, it is like the many faces of Eve, it has so many personalities." One can envisage the retailer who says this is such a dog's breakfast of legislation.

Perhaps in the case of the retailer, it is so obviously a case of trying to please so many masters at the same time, none of them being the people of the province, none of them being the clergy, none of them being people who

have to work in the retail business, none of them being senior citizens, none of them being people who want to worship on Sunday. So the store owner may well say: "I am going to do this certain bit of conduct. Indeed, I may even call the police myself and let them prosecute me, because this whole act is so difficult to understand. I am going to see whether the judge says it was okay or not."

That could be construed by a judge or a justice of the piece as a test case, where no real harm was done. In a conviction under those circumstances, the justice of the peace or the judge may well say, "Recognizing that your motive was not malevolent, that it was a benign motive and that you have done a service to the community by letting us rule on this particular aspect of this horrible piece of legislation, we will then consider it not to be in the interests of justice to impose the minimum penalty." If logic prevails in this room, I just do not understand how my amendment to this amendment could not be acceptable to virtually every member of this committee.

We know that the fears about minimum penalty are no longer there because of section 60. We know that this amendment needs its own penalty provisions because the offence is so unrelated to the actual act of selling or opening for sale. Basically, this is designed to deal, obviously, with employees, or as Mr. Runciman pointed out, with the Cadillac Fairviews of the world. We know that they are the people who are going to be forcing people to violate the spirit of the law.

I guess no wording is ever perfect. Unfortunately, the type of coercion, the type of requirement, the type of counselling—again, I presume the law cannot be open-ended. It has to be written; it has to be articulated. What is scary, what is really frightening, is that it is only going to be the crude, unsophisticated, desperate retailer who is going to find himself convicted of this. The smooth operators, the wealthy entrepreneurs, the developers are the people who are going to be able to manipulate and manoeuvre and do things in such a way—unfortunately, these are the people who are going to be able to use intermediaries to do the coercing, the requiring and the counselling. Again, that is not a reflection on the wording of this particular amendment, but it is a reflection on the whole bill.

If my suggestion can be demonstrated to me to be inappropriate, then I will be the first to withdraw my amendment to the amendment, and I am so eager to hear from persons who might demonstrate that to me. I think the clerk gave everybody a copy of section 60.

1720

Mr. Chairman: Yes. I was just going to ask legislative counsel, if that amendment as put by Mr. Kormos was put that way, would you refer to it by saying that section 60 of the Provincial Offences Act would apply, so it becomes an entire code unto itself rather than being missed because the justice of the peace was not aware of section 60 of the Provincial Offences Act? Is that usual?

Mr. Kormos: Every competent justice of the peace knows about section 60, and they are all government appointed.

Mr. Chairman: Actually, what I am trying to find out is whether it is usual that you would put in there the actual words that section 60 of the Provincial Offences Act would apply.

Ms. Hopkins: It is not necessary to do that.

Mr. Chairman: The judges are presumed to know the law.

Ms. Hopkins: And crown attorneys or defence counsellors would bring it to their attention.

Mr. Chairman: Okay. Any further speakers?

Mr. Runciman: Before commenting further on Mr. Kormos's amendment, I would still like to hear either counsel or Mr. Spring comment on the penalty section. In respect to the concern that Mr. Kormos has raised and which his amendment to the amendment addresses, I am wondering about the concern he has expressed, and it is an understandable one; whether counsel agrees that it is a legitimate one in the sense that the penalty provisions that we built in with the amendments that were approved yesterday, because of the ceiling question and so on—what impact that would have if, indeed, we did not accept his amendment.

Mr. Chairman: Do you understand that?

Ms. Hopkins: Yes. The counselling offence operates in two situations, one where you counsel someone to commit an offence and he does it, and the other where you counsel someone to commit an offence and he does not.

If you counsel someone and he does it, then the maximum fine would be the greater of \$50,000 or the gross sales of the person who did it. If the gross sales were higher than \$50,000, the maximum fine could be that higher amount.

If you counselled someone to commit the offence and he did not, then the greater of \$50,000 and the gross sales would be \$50,000, because there would not be any gross sales to take into account.

Mr. Runciman: What counsel is suggesting is that, really, Mr. Kormos's amendment is not necessary, because she feels that the wording will suffice. I will give an example. A mall owner pressures a tenant into opening up a Woolco store, and that Woolco store does \$100,000 of business in that particular day. The mall owner who coerced that tenant into opening on that particular day can be fined up to the gross sales of the particular company that opened as a result of the coercion.

Ms. Hopkins: Without Mr. Kormos's motion, yes. With Mr. Kormos's motion, the ceiling would be fifty grand.

Mr. Runciman: I see. So in effect, the potential for higher penalties exists without Mr. Kormos's amendment. I am sure he will want to consider that, because I tend to agree with his comments in respect to this element being the far more distasteful act. Certainly I think all members of the committee over the past number of months have been expressing concern about that particular element and the fact that we have all, I believe, been contacted by tenants in malls across the province and, of course, by employees who have to work within those operations, who are very much concerned about this kind of pressure being applied.

As Mr. Kormos has said, I think we have to be able to send out a very clear message. Obviously, though, this does not address the concern about minimum penalties he articulated so well. I am not sure how we can really meet that concern in respect to Mr. Pope's suggestion.

Mr. Kormos and most members of the committee, I think government members included, find the idea of the possibility of much higher penalties than a maximum of \$50,000 for individuals or companies involved in this distasteful act much more appealing than the ceiling your amendment proposes. Perhaps there is some other way, a rewording of Mr. Kormos' amendment to the amendment that could address that particular element without minimizing the ceiling in respect to the maximum possible fine. Mr. Kormos, I am sure, would like to comment on that.

Mr. Kormos: I appreciate counsel's comments. My concern remains at this, and perhaps we should think about this for a minute, or 25 minutes. Perhaps counsel could comment on the scenario which was described by Mr. Runciman and by her. Obviously, there is a contravention of this provision notwithstanding that no sales took place. If sales took place, then there is not only a contravention of this provision but also a contravention of subsection 7(1) or 7(2). This provision does not create or generate any immunity on the part of the person who is coerced, required or counselled.

Once again, counsel would know far more about these sorts of things than I do. How enforceable is an undefined penalty like gross sales against a person who did not have direct control over the gross sales? In the case of the person actually doing the selling, in the case of subsections 7(1) and 7(2), they do have direct knowledge and control over the gross sales. In other words, they can sit down and say, "I'm going to stop selling when I reach \$60,000 today, knowing that my exposure will be a penalty of \$60,000." At the very least, they can be presumed to be able to do that. If they have turned a blind eye to that, that is their problem.

Maybe Mr. Spring or counsel can comment on this: In the case of a person who is merely counselling, how enforceable is an undefinable penalty when they do not have a direct or intimate or causal relationship with that matter of gross sales? Let's just look at these things from the point of view of whether we are sort of opening Pandora's box. What about the person who counsels somebody and says to him: "You go into my store tomorrow, but in case I'm caught I don't want my exposure to be more than \$10,000. As soon as the cumulative total on the cash register stops at \$10,000, I want you to bolt the door. And if you don't go, you're fired." We know that these sorts of people are going to be doing that.

1730

Interjections.

The Acting Chairman (Mr. Ballinger): I cannot comment.

Mr. Kormos: How enforceable are the penalty provisions in subsections 7(1) and 7(2) against that person? Look, \$10,000 is bad; let us stick to \$60,000. Is that an attributable penalty? It is not a hard-and-fast penalty at the second level—"the greater of...gross sales." Right? Is that enforceable?

Somebody who is smarter than I am will have to answer this: Is that penalty enforceable against somebody who does not have an intimate or a personal familiarity with the gross sales? We could see how it is enforceable. It is logically enforceable against the person who is there ringing up the sales on the cash register, or who is capable of being there. What about the mall owner, who simply tells his tenants: "Sorry, be it in your lease or not, I don't care, because I have really smart lawyers. They are not in politics;

they are out there practising law. I have really smart lawyers who can weave their way around this horrible bit of legislation quick as a boo. They say, "You go ahead and tell your tenants that they have to open on Sunday."

How enforceable is that vague, definable but not quantifiable penalty in that particular circumstance? If that is enforceable, according to the views of counsel here, then I am quite prepared to live with that, because I appreciate Mr. Runciman's logic in that regard. My concern was the one I just expressed, because we all agree that this is a far more disgusting bit of behaviour reflected in this offence that calls out for a minimum penalty to reflect that greater degree of disgusting behaviour.

I am quite prepared to change the amendment to coincide with what Mr. Runciman suggested, if my question is answered such that my concerns—and I trust the concerns of everybody here—are relieved by virtue of the comments by either of the two counsel present.

Ms. Hopkins: Although the shopping mall owner may not have direct knowledge of the day's sales, under the Provincial Offences Act a search warrant can be used to obtain evidence relating to the commission of a crime. Therefore, this information can be available.

My understanding of the financial arrangement between mall owners and renting companies is that mall owners often receive a percentage of sales. Thus, mall owners in fact do have knowledge of a day's sales. To the extent that subsections 7(1) and 7(2) are enforceable, this one would be as well.

Mr. Kormos: When and where? Do we have any examples of legislation that do not cap or put a ceiling on a penalty? For, quite frankly, this penalty, "the greater of \$50,000 or gross sales," does not have a limit, other than the gross sales. Is there any such thing as legislation here now that is similar? Once again, I raise this so that I am covered in the event that this legislation is ever passed and a judge at some point basically dumps all over it, and I can say I had concerns about that; my motives are true. Is there any other legislation that has that type of penalty provision?

The Acting Chairman: Counsel, do you understand the question?

Ms. Hopkins: I think so, and I am not aware of any.

Mr. Kormos: I guess it is fine to tread new ground.

Mr. Sola: Water?

Mr. Kormos: Well, when you walk new ground.

Interjection.

The Acting Chairman: Any other comments, Mr. Kormos?

Mr. Runciman: I would like to make just a brief comment, and I think Mr. Kormos continues to raise some very valid points. The new member is making an excellent contribution to the deliberations.

When we talk about the enforceability of undefined penalties, and counsel has indicated to us that, in her opinion, an undefined penalty in this instance would be quite enforceable, I guess I would encourage Mr. Kormos, based on the response of counsel, to consider perhaps a rewording of his

amendment to the amendment, which zeroes in specifically on the element of minimum fines, which he has very eloquently expressed, and I think retains the provisions in my amendment in respect to the open-endedness, if you will, in respect to the undefined penalties.

The fact that they are enforceable obviously makes it that much more attractive. We want to have penalties in effect that are going to act as deterrents—that is the idea here—and the more effective the deterrent factor, I think the more we should be looking at that option.

I think counsel has confirmed that indeed this will be enforceable. Hopefully, that will alleviate Mr. Kormos's concerns in respect to that area, and I would hope that we can move on from that particular concern and, through the submission of another amendment to my amendment, if he is indeed agreeable, address the other concern of minimum penalties.

Mr. Kormos: I am prepared, Mr. Chairman—I have concerns about that, and I would hope that the chairman might request counsel to do some research in that regard as to my concerns about that type of penalty provision. As a member of the community, I would hope that when I am doing something wrong—

The Acting Chairman: Incidentally, Mr. Kormos, as a member of the committee, you have that right to request that information from counsel.

Mr. Kormos: Okay, but I am hoping that I have raised enough concern on the chairman's part.

Mr. Runciman: Not a chance.

Mr. Kormos: No? I have made my position clear.

Mr. Hampton: The chairman's only concern is what is going to happen to Christmas.

Interjection: A very valid concern.

Mr. Kormos: I have made my position clear, and it seems as though the chairman should be interested in—really, the chairman has a role that is a role, I would think, of stewardship. When you spoke of pregnant pauses, really it is the chairman who is the midwife of this—

The Acting Chairman: I have been called a lot of things, but—

Mr. Hampton: You had better deliver on this one.

Mr. Kanter: This bill has been in embryo over the average.

Mr. Kormos: The gestation period is going to be incredible.

Mr. Kanter: Ah, the real chairman. We need you, Bob. We never realized how much we would need you.

Mr. Kormos: Really, the concern should be the chairman's part—

Interjections.

Mr. Kormos: It should be the chairman's concern, and indeed the government members' concern, that they do not create a horribly flawed, an

unenforceable piece of legislation, when all of the hype that was attached to it was in an effort—

Mr. Chairman, if I could start where I—

1740

Mr. Chairman: I do not know. The clerk will fill me in on it.

Mr. Kanter: You cannot repeat. This is not allowed.

Mr. Ballinger: Actually, I prefer my role over here.

Interjections.

Mr. Hampton: We prefer your role over there too.

Mr. Chairman: Thank you, Mr. Ballinger.

Mr. Kormos: It seems to me it is the chairman who should be requesting counsel to look at this with a view to enforceability, because it is not our bill.

Mr. Hampton: It is not our embryo.

Mr. Kormos: That is right.

Interjection.

Mr. Kormos: We are denying fatherhood, and all the blood testing in the world will not—

Mr. Chairman: Did I come into the wrong committee or what?

Mr. Ballinger: Mr. Chairman, I thought you had put me there for punishment.

Mr. Kormos: I am prepared to change my amendment to the amendment so that it incorporates the same type of penalty provisions as in subsections 7(1) and 7(2), notwithstanding all of my caution about that.

Mr. Chairman: You must withdraw the amendment that you have made first.

Mr. Kormos: No, I do not think so. I think I can vary the amendment as it is on the floor.

Mr. Chairman: If you withdraw this one and introduce the other one. It is neater. Trust me.

Mr. Kormos: I will withdraw the current amendment and propose a new amendment to the amendment, which entails the maximums as included in subsections 7(1) and 7(2)—see, you missed this part, Mr. Chairman, or maybe you did not miss this part—and includes a minimum penalty of \$500. We, knowing full well now—

Did you miss this part?

Mr. Chairman: I think I have caught up to—

Mr. Kormos: We, knowing full well now that when the committee dismissed any—and again, my contention is that the dismissal of the two motions of November 8 and November 15 were in no way—the fact—

Mr. Chairman: I am not ruling you out of order on that.

Mr. Kormos: —that they were turned down can in no way be construed as a dismissal of the concept of minimum penalty, but for Mr. Kanter's brief comments that it would appear that the primary, if not the only, reason why those are dismissed is because of the fear of there being a trifling or technical offence where the minimum fine had to be imposed; but that section 60 of the Provincial Offences Act was not a part of the considerations. Any concerns about the minimum penalty are now relieved.

We know that this is a more serious offence than the actual offences under subsection 7(1) or under the bylaw, because this is the dirty deed of forcing somebody else to do your dirty work and exposing them to the same penalties, that is, the penalties under subsection 7(1) or under the municipal bylaw. Really, this offence calls out for that minimum fine of \$500, with the maximum being in the form as contained in subsections 7(1) and 7(2).

Mr. Chairman: Maybe just for the benefit of all I could read that.

Mr. Kormos moves that the proposed subsection 7(2a) of the act, as set out in Mr. Runciman's motion, be amended by striking out "the same fine as is provided for a contravention of section 2, the regulation or the bylaw, as the case may be" and inserting in lieu thereof:

"(a) to a maximum fine of not more than the greater of,

"(i) \$50,000; or

"(ii) the gross sales in the retail business establishment on the holiday in respect of which the offence under this subsection occurred; and

"(b) to a minimum fine of \$500."

Mr. Kormos: Some collective thought might be worthwhile here. When speaking of the gross sales on the holiday spoken of, what is that linked to? Is that linked to the gross sales that result from the coercion requirement or counselling?

Mr. Chairman: I am not allowed to give opinions, but I would think it relates to the coercion or the counselling or the offence.

Ms. Hopkins: I do not think that you have to establish a causal connection between counselling someone to commit an offence and the gross sales that occur.

Mr. Kormos: Does that mean that if I unsuccessfully counselled someone to commit an offence, or if you did, and the counselling with respect to that person was committed but was ineffective in so far as persuading that person to go in and unlock the store and do the sales was concerned, but if I then went in and said, "My employee had enough courage to stand up to me, so I have to go in and do the dirty deed myself," does that mean that the fine with respect to the counselling would be the gross sales that I rang up or could be the gross sales that I rang up, Mr. Chairman?

Mr. Chairman: Under the rules, I am not allowed to give any answers. I do not give them unless you pay me.

Mr. Kormos: I know. I am realizing that I should properly be addressing these questions to you.

Mr. Chairman: No, I think you are asking legislative counsel for an interpretation as to the words that she has put forward to meet your amendment.

Mr. Kormos: I know, but it is proper for me to address it to you, is it not?

Mr. Chairman: Oh yes. Or Mr. Ballinger, if you like, or anyone else. Maybe we can just inquire. Would you like a little time to think about that?

Ms. Hopkins: No, it is okay. I am trying to find the words to make this intelligible, because the fit between Bill 113 and 114 is a little complicated. The person who commits an offence under Bill 113 is the person who carries on the business. Bill 113 does not speak to employees at all, so what you are looking at is a mall owner coercing a business to open and carry on sales. It does not matter who is working the cash register; you are looking at the gross sales of the business that is open as the quantum of the maximum fine.

Mr. Runciman: Could I ask a supplementary to that? In an instance like that, the one Mr. Kormos described, I guess you are saying it really is not applicable with the situation he is describing, where a mall owner or an owner of a business tried to coerce an employee?

Ms. Hopkins: Right.

Mr. Runciman: What I am getting at is if an owner of a business, for example, who does fall under this particular bill attempted to coerce employees or an employee into operating a business on a Sunday or a holiday and failed in that attempt and then he or she operated the business, just out of curiosity, would he or she be open to charges under more than one section or provision of this act, as an operator and as someone who was attempting to coerce an employee? Would that perhaps open up another area that has not been considered?

1750

Mr. Chairman: We are almost getting to the stage where the sphinx has asked a couple of questions.

Ms. Hopkins: The person who requires an employee to come to work on a day when the store is supposed to be closed, who, you might say, is coercing the employee to come to work, does not fall within the scope of Bill 113.

The person who commits an offence by opening a store under this bill is the business entity. For example, it is the corporation rather than the employee which commits the offence by opening the business and making sales under this bill.

Mr. Runciman: It does not necessarily have to be a limited business or a corporation. It could be an individual who is operating a business. I am still confused in respect to the possibility of an individual or a corporation or whatever being charged in two separate sections of this bill: the coercion element and also the other element, as an operator of a business.

Ms. Hopkins: As an operator of a business, you could be charged under this bill for requiring employees to work. The place the charge would arise is under Bill 114.

Mr. Runciman: But the amendment we are dealing with here is talking about coercion.

Ms. Hopkins: Right.

Mr. Runciman: And we are talking about Bill 113 and its inclusion in Bill 113.

Ms. Hopkins: If a mall owner requires that tenant businesses are open on a Sunday, the mall owner could be said to be coercing the tenant businesses to be open. That is what is captured here.

Mr. Runciman: I see. So there is no coverage in Bill 113 in terms of coercion of employees.

Ms. Hopkins: Right.

Mr. Kormos: It talks about counselling. If a person in a community who was antichurch, antifamily, who wanted people to work on Sundays, went to another person and counselled him, saying, "I'm antichurch, I'm antifamily, and that's why I think you should have to work on Sundays. Do it. Don't let any municipal bylaw stand in your way," that would constitute counselling an offence, would it not?

Mr. Chairman: I think what legislative counsel is saying is that there are two bills. You are aware there is Bill 114?

Mr. Kormos: Yes.

Mr. Chairman: She is saying that type of section in Bill 114 would capture the situation where an employee was counselled. Is that right? Whereas under Bill 113, it would be the business that is captured.

Mr. Kormos: This speaks of every person who coerces, requires or counsels another person.

Ms. Hopkins: Yes.

Mr. Kormos: If somebody who was antichurch, antifamily, and believed in Sunday shopping and Sunday working were to counsel another person, "Go open up your shop on Sunday," the person who did that counselling would be committing an offence under this section, notwithstanding that it is an amendment to Bill 113.

Ms. Hopkins: The only person you can counsel to commit an offence under this bill is a person carrying on a retail business.

Mr. Kormos: That is the scenario I just gave. Somebody who cared not for the role of the church in the community, who cared not for the sanctity of the family, who believed in Sunday shopping, who counselled a retailer, "Open your business notwithstanding the bylaw, because you can make lots of money and it's worth the risk," it appears to me would be committing an offence under this section.

Mr. Chairman: That is what I understand counsel is saying.

Ms. Hopkins: The way I would read the subsection on counselling and coercion, that would be a reasonable scenario which would fall within the offence. Yes, I agree with you.

Mr. Kormos: I guess part of the problem I have is with the regulations as well, and that is the Lieutenant Governor in Council. I give thanks to counsel for illustrating to me the three separate regimes that we will have here if this bill is passed; three separate regimes, and variations thereof, combinations and overlapping of those three separate regimes, except for the fact that, in the instance of areas without municipalities, the Lieutenant Governor will make regulations, because the Lieutenant Governor makes regulations pursuant to section 4, rather than letting the overriding provision of the statute remain.

Mr. Chairman: The regulations were made in those cases where it cannot be done by ballot, as I understand it.

Mr. Kormos: This is quite right—where there is no municipality. But that is how I understand it and I just want to make sure that I am understanding it correctly, Mr. Chairman.

Mr. Chairman: Thank you.

Mr. Kormos: And that is as to the amendment to the amendment.

Mr. Chairman: Your amendment to Mr. Runciman's amendment.

Mr. Kormos: My amendment to Mr. Runciman's amendment.

Mr. Chairman: Is there any further—

Mr. Runciman: We have Mr. Kormos's amendment to my amendment before us now, and it, I think, addresses all of the concerns that he has expressed here this afternoon. He has brought in a new element in respect to a minimum fine and the Provincial Offences Act and how that might or might not impact on the government's thinking, in respect to minimum fines.

I think, before we take any decision with respect to this amendment, that we should hear the parliamentary assistant's comments in respect to Mr. Kormos's points brought forward about the Provincial Offences Act and how that might impact on the government's thinking in respect to the use of fines in this bill.

Mr. Chairman: I would inquire if there are any members who wish to—

Mr. Kanter: I have no difficulty in commenting on that, but prior to that, there is a question that I think Mr. Kormos, Mr. Runciman and others have been referring to, and I was trying to follow the discussion, as I am sure were other members of the committee. It relates to just who—

Mr. Ballinger: I hope you had better luck than some of us.

Mr. Kanter: I said I was trying, Mr. Ballinger. That relates to just who would be affected, implicated and possibly charged with the coercion or counselling provisions. I guess the nature of my concern, and I think I would like to put this as a question to legislative counsel, is whether there is any

difficulty of duplicate charges, shall we say, being laid against an employer under this bill, and also, under Bill 114.

The counsel may or may not have replied to that indirectly before, but I think it is an important question we should have clarified before I answer the other question that was put to me.

Mr. Runciman: I heard a bell.

Mr. Chairman: Somebody has drawn to my attention the fact that the bell has rung. We stand adjourned until after routine proceedings on Monday, December 5. I would remind you that on December 5, there will be only 19 days left until Christmas.

The committee adjourned at 6 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

MONDAY, DECEMBER 5, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

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Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Collins, Shirley (Wentworth East L) for Mr. McGuinty

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Hart, Christine E. (York East L) for Mr. Mahoney

Kormos, Peter (Welland-Thorold NDP) for Mr. Hampton

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Farnan

Roberts, Marietta L. D. (Elgin L) for Mr. Offer

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Hopkins, Laura A., Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witness:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, December 5, 1988

The committee met at 4:08 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Chairman: I recognize a quorum. Welcome back to the hearings of the standing committee on administration of justice. For members of the public who are watching this program, we are dealing with Bill 113, An Act to amend the Retail Business Holidays Act.

I should advise the full committee members that your subcommittee met. We had received certain information, which we had distributed to you last Tuesday. The clerk has drafted a letter from myself as chairman, on behalf of the committee, a copy of which is before you. It has been approved in content by the subcommittee and will be sent out to Mr. Vandezande.

We have also received further information that should either be before you or will be before you, which was a submission from the Canadian Federation of Independent Grocers and the Retail Merchants Association of Canada (Ontario) Inc. The subcommittee has discussed that information and we have directed it to our research staff to consider. Also, we are making it available to all the members of this committee to consider.

We are hoping that we will be able to deal with the matter of the size of pharmacies on December 12. It is the subcommittee's unanimous decision that we would stand that down until December 12, awaiting that further information.

Mr. Philip: December 12, 1989?

Mr. Chairman: December 12, 1988. It is likely as well that a letter of a similar type to the one that you have before you to Mr. Vandezande will be the type of letter that will be sent to this group as well, in light of the fact that we are now into clause-by-clause consideration and we have finished our public hearings and public input, but the information has been made available.

Now we will return to a New Democratic Party motion, which was on the floor, moved by Mr. Kormos. For the benefit of the members and also, I suppose, for the benefit of the viewing public, I will read it again.

Mr. Kormos moves that the proposed subsection 7(2a) of the act, as set out in Mr. Runciman's motion, be amended by striking out "the same fine as is provided for a contravention of section 2, the regulation or the bylaw, as the case may be" and inserting in lieu thereof:

"(a) to a maximum fine of not more than the greater of,

"(i) \$50,000; or

"(ii) the gross sales in the retail business establishment on the holiday in respect of which the offence under this subsection occurred; and

"(b) to a minimum fine of \$500."

Mr. Kormos, you have the floor.

Mr. Kormos: I recall there was some concern about the scope or what this encompassed, especially in view of what was already achieved by subsection 7(1) and purportedly achieved by Bill 114. I sought some clarification and am still unclear in that regard. I wonder if we could review that, if counsel has had a chance to reflect on that, and find out exactly where the two fit in. Is there an overlap? An overlap would cause some concern with the Employment Standards Act vis-à-vis this legislation. I do not know whether counsel has had a chance to reflect on that and help us more in that regard.

Ms. Hopkins: Yes. I gave the committee incorrect advice on Tuesday about the scope of the motion concerning coercion and counselling and about the relationship between this bill and Bill 114 in terms of employer-employee relations. I would like to correct the mistaken impression I left you with.

The coercion and counselling subsection proposed by Mr. Runciman speaks not only to relations, for example, between mall owners and tenants of a shopping mall; it speaks also to relations between an employer and an employee. An employer who requires an employee to work on a prohibited day would be caught by the coercion offence.

Bill 114 does not deal with the situation where there is a Sunday opening that is against the law. Bill 114 deals with the situation where the Sunday opening is permitted by law and where an employer is coercing an employee who is permitted to turn down Sunday work to take the Sunday work. In my view, there is no overlap between the offence provision under Bill 114 and this offence provision.

The important thing for me then to make sure that you are not led astray about is the fact that this coercion and counselling offence covers the employer-employee relationship as well as the mall-owner/mall-tenant relationship.

Mr. Kormos: I do not see that as a mistake as much as an example of what we have been talking about; that is, the difficulty of this particular legislation. Mr. Kanter spoke about enforceability and the need for enforceability. In my view, one of the elements of enforceability is understandability of the legislation; that is to say, it should be clear.

I have a further question, perhaps once again of counsel. The three words that are used are "coerces," "requires," "counsels." Again, addressing our minds to the matter of enforceability and understandability, and I am sure all of us have in our minds scenarios that have been envisioned and certainly by the drafter of this particular amendment, is there anything that conceivably would not be included in that scenario? Is there any real-life situation, even at the level of speculation, that would not be caught by the words "coerce," "require" or "counsel"?

What I am asking is, does that phrasing basically encompass every situation wherein—because this does not require an unwilling participant. The fact that somebody is counselled to do something may result in him willingly,

as a result of that counsel—I am not in any way suggesting that this be one of the ways of committing the offence—enticing somebody to do something, and that may be included in counselling. But to counsel somebody does not have the same negative qualities as coercion or requirement. Coercion or requirement speaks of some relationship wherein there is power over the person who is being required or coerced. Again, counselling could be a very benign type of counselling.

I am wondering if counsel can comment on that language being sufficiently broad to cover any of the reasonably conceivable scenarios that the subsection would attempt to intervene in.

Ms. Hopkins: I think that the terminology "coerce," "require" and "counsel" covers that broad spectrum of behaviours designed to encourage someone else to break the law. I am not sure that I can help the member with particular scenarios that might or might not fall within the three words there; but from a drafting point of view, this is a broadly encompassing way of articulating the offence.

Mr. Kormos: Is it necessary to incorporate words like "whether or not a contravention of the act is committed" to make it quite clear that it is not—because last time we were here we talked about the distinction between somebody who is counselled to do something, or coerced or required to do something, but where no subsequent contravention of subsection 7(1) or a municipal bylaw takes place. We talked about that as being distinguishable from a scenario wherein a contravention of the bylaw or of subsection 7(1) does take place, wherein the person being counselled, required or coerced could conceivably be liable under the bylaw or subsection 7(1), respectively.

Do we want to distinguish between the two scenarios—one in which there is "counsel and coercion" as a requirement and no secondary offence is committed and one wherein a secondary offence is committed? I have some difficulty because, as we discussed last week, for a person who has counselled, required or coerced, there is nothing in this subsection or in the rest of the bill that would give that person immunity from a subsequent prosecution under subsection 7(1) or under the municipal bylaw.

The types of coercion, counselling and requiring we are talking about here could be such that—obviously what we are talking about here, by and large, is protecting the worker. The thrust of the government's comments with respect to this whole bill is basically: "Don't worry. The worker is going to be okay. The worker is going to be protected." But there is nothing in the bill that gives the worker who is required to work, and who fulfils that requirement, protection or immunity from prosecution under subsection 7(1) or under the municipal bylaw.

My God, quite frankly, that is frightening in view of the fact that we are dealing here primarily with workers who, as we know, are not unionized, who tend to be low-paid and who in many cases are women who need work. Obviously the purpose for proposing subsection 7(2a) is to recognize that workers are going to become victims, yet there is a scenario here wherein a person who counsels is committing an offence. We are suggesting that this is sufficient protection for the worker, yet the worker would still be exposed to prosecution under subsection 7(1) in the event that the worker complied with the counselling or the requirement or the coercion.

I am wondering if counsel could comment on that gap basically. I certainly do not want to see workers punished when they themselves are

victims, but maybe that gap is a matter of some concern to the rest of the committee. Otherwise, once again, we are not being quite honest about subsection 7(2a). We are saying that it is protecting workers, yet with the bill as it stands, we are still exposing them to prosecution after having been coerced or required.

1620

Mr. Chairman: I am reluctant to ask legislative counsel to comment on that, because there is sort of a thin line between policy and what the words mean; you put her in a difficult position. I think the words themselves probably speak quite clearly of that not being the case. We then go, if you want, either to Mr. Kanter or to Mr. Spring. It is sort of a fine line between policy and interpretation; I think it falls more in the area of policy. If you want, ask Mr. Kanter or ask Mr. Spring.

Mr. Kanter: Ask Mr. Spring; he may have some comments on how the various sections of the bill interrelate, if that is Mr. Kormos's question. I am not sure.

Mr. Chairman: I think Mr. Kormos's question, as I understand it, is that he is saying that, under the coercion amendment, a person who coerces is caught but if there is a nonfulfilment of the coercion then the employee is not caught; but if there is a fulfilment because of the coercion in committing the act, then the employee is also subject to prosecution, and perhaps only did it because he was coerced or counselled. I think that is what he is saying.

I do not know whether that is something that has been considered, because the amendment was brought forward as an amendment. I do not know whether you want to speak to that, Mr. Kanter, or Mr. Spring.

Mr. Kanter: I do not know if Mr. Spring has any comments on it. I will have some comments, but I would ask Mr. Spring if he has any comments.

Mr. Chairman: Do you understand the question?

Mr. Spring: I will try to avoid policy areas. The only point I would make is that in my understanding the intention behind this is to cut down on coercion that may exist at the present time. In fact, to the extent that it happens now, this clause is designed to prevent that. In fact, employees who are coerced into working at the present time are subject to prosecution to the extent that the coercion does not avail them a defence. The situation with respect to the prosecution of employees, in my understanding of this proposed amendment, would not be altered.

Mr. Chairman: I am not going to go any further, because again Mr. Spring is in the same category. He is a member of staff and is really not the person who decides policy. He can tell you what the framework of the bill is, and I think he has told you.

Mr. Kanter: I would like to comment and perhaps go a little farther afield than the narrow thrust of Mr. Kormos's question. I had thought that we were now debating an amendment by Mr. Kormos to put a maximum fine in a coercion section. It seems as if some of Mr. Kormos's comments may go more to subsection 7(1). I believe, from the handy-dandy chart that we have been given today, there was an amendment to subsection 7(1) by Mr. Kormos, which this government accepted. I do not recall him raising that question then. If he had that concern, that would have been the appropriate time to raise it.

I am really concerned that we may be missing the forest for the trees. This government has tried very hard to step up the enforcement provisions of this law. I happened to have occasion to look at some of the ads in the newspaper this weekend, and I saw a tremendous number of stores that are open on Sunday illegally. These ads are from a couple of Toronto newspapers and perhaps several other newspapers in the province.

You can buy radios, electronic products, furs, leathers, drapery and vertical venetians. All of these places are open on Sundays from 10 a.m. to 6 p.m. You can buy economy bedding, open this Sunday from 9 a.m. to 6 p.m. I will pass these around to all members of the committee. You can buy sports products. There is a carpet sale, open Sunday from 10 a.m. to 5 p.m. You can buy ceiling fans, stereo products, cameras, men's suits. "Men's suit sale—open today"—Sunday. That is another one. This looks like men's and ladies' suits.

Mr. Chairman: Perhaps it would be shorter if you told us the things you cannot buy on Sunday.

Mr. Kanter: I am not sure if there is very much you cannot buy. "Open Sunday—six hours only—inventory clearance—furniture." We have not had one in the furniture category. You can buy hot leather. I am not going to buy hot leather. Let's see. You can buy furniture. At Future Shop Discount Superstores, you can buy just about anything; they are open Sunday, "six hours only," 11 a.m. to 5 p.m. I am not sure if this is the craft show. That one may actually be open legally. I am pretty sure the vast majority of them are not. Another is for a designer fur sale, open Sunday. Let's see, this looks like a ski warehouse.

Mr. Chairman: I notice some affordable housing.

Mr. Kanter: "Floor-model clearance, today"—Sunday—"only." That is for furniture. This one looks like another sort of video sale—televisions, video recorders and software.

I have a few from another paper, because I do not want to limit this to Toronto. I have some from Brantford, indicating several shops there are open Sunday.

Interjection: Do you have any from Welland?

Mr. Kanter: Let's see. I do not think I have any from Welland. I just looked at a couple of papers. "Open house—jewellery." This one may be of particular interest to Mr. Kormos: "Western Corral, Canada's largest boot store, now open at its new location, 490 Eglinton Avenue West, pre-Christmas sale, open today, Sunday, 11 to 5."

Mr. Kormos: I would be loath to shop there on a Sunday, but I would be pleased to drop in on Monday.

Mr. Kanter: I will be glad to pass this around.

My point in this is that there is a problem in enforcement of the current legislation. Our amendments are designed to go a long way to eliminating this problem. There are many tougher enforcement provisions in the bill: increased fines; fines on gross sales, an amendment which we accepted, I believe, introduced by Mr. Kormos; the use of injunctions to get around the court proceedings, which are very slow; protection against coercion, a \$50,000 fine.

Quite frankly, I do not think it is necessary to have a minimum fine, as Mr. Kormos has suggested, and I will not be supporting his amendment in that regard, but bear in mind that we are recommending to the Legislature that it institute a very heavy penalty on coercion in this regard.

We have been considering this legislation for some time. I believe the clause-by-clause—

Miss Hart: Don't forget these ads can be used as evidence.

Mr. Kanter: Yes. I forgot a very important aspect, and I thank my colleague. If and when our bill is passed, the police will be able to use these ads in evidence by another section of the bill, subsection 7(4): "A sign or advertisement giving the hours of a retail business establishment is admissible as evidence that the retail business establishment was open during those hours."

Unfortunately, none of these provisions is law yet. They are not law because we have been discussing this bill in this committee, clause by clause, since October 5. We have spent about 16 sessions in this committee debating not only, I would submit, substantive provisions, but we have had some excursions into other questions of procedure, away from the substance of this bill.

1630

I do not want to delay further, but my point is that we should be—

Mr. Chairman: I think we have got your point.

Mr. Kanter: We should be moving perhaps a little more expeditiously. We should be completing the provisions on penalties, hopefully fairly soon. I realize there is a small problem with drugstores in terms of information, and we have deferred that until next week, but I would suggest that it is important for the people of this province not that we continue to play games among ourselves here but that we complete the business of this committee and do as the House requested and get this bill back to the House. I think it would be helpful to the people of this province that we do that before Christmas.

I wanted to make that comment in the context of some of the more subtle, more minute excursions we have taken in this committee. There is important public business before this committee. I think there are things happening in the marketplace which show that the marketplace may have gone rather beyond this committee. The government has attempted to introduce some measures that will control or regulate some of these measures and, quite frankly, we have been frustrated by the very long time this committee has been taking in dealing with this bill. I think we should get on with it.

Mr. Chairman: Your point was not raised as a point of order, so I take it as a response to Mr. Kormos. I have two speakers on the list so I am going to let them speak, but before I do, Mr. Kormos, I think the point being made is quite accurate, that you were really going outside of the amendment you are supposed to be speaking to. You are going back to subsection 7(1) or 7(2) and they have in fact been passed. To that extent, I am going to cut you off if you go beyond that again.

I have Mrs. Cunningham and Mr. Philip who wish to address that rather significant trip through the newspapers we have had just recently.

Mr. Kormos: Prior to that, Mr. Chairman, if I may, I appreciate what the chair is saying but I will defer to these two people.

Mr. Chairman: They are next on the list so it is not a matter of deferral. It is a matter that they are next on the list.

Mr. Kormos: I was speaking and interrupted by Mr. Kanter, because it was basically a referral of an issue to Mr. Kanter.

Mr. Chairman: That is true. You have the rules down pretty well. You are right.

Mr. Kormos: I was only guessing, Mr. Chairman.

Mr. Chairman: It is pretty good. You are right. You can allow those people, which you have done. Mrs. Cunningham.

Mrs. Cunningham: Perhaps we will give Mr. Kormos even more ammunition in his response.

I was interested in the newspapers Mr. Kanter brought forth today. I am very much aware that a lot more breaking of the present law is going on now than even a year ago. It is particularly apparent in London, Ontario, I can assure you. This time last year there were very few if any retail merchants who were blatant enough to openly break the law. In the research we have done, there was one person who tried who, after two Sundays, was simply forced to close, because the local police came in and said: "You're breaking the law. Close."

We did not have difficulty in London in the enforcement of the present legislation; we had people who questioned it, but we did not have trouble enforcing it. Obviously, around the province there have been places where the Solicitor General (Mrs. Smith) has told us there is some difficulty in enforcing the legislation.

I should tell you that the reason we now have a multitude of stores open on Sundays in London is because this government stopped giving direction to have the legislation enforced. We have statements that were made by the Attorney General (Mr. Scott), and if I knew that Mr. Kanter was going to bring this kind of demonstration to the committee today, I would have brought the statement he made that softened considerably the direction of the province to the law enforcement officers.

The excuse has been made around the province and, as we checked on it in the months of September and October in getting ready for these committee hearings, we now know that the present law is not being enforced. It is not because it cannot be enforced, it is because it is not being enforced, and anybody out there right now is making hay while the sun is shining.

Mr. Kanter is quite right that we are taking a significant amount of time in debating this bill, and I think as all members of the government and of the opposition parties put forth amendments, we find out how complicated the bill is, how much more complicated it is now than we first thought when we looked at it. We have not even begun to debate Bill 114, and I can hardly wait to point out to the public the complexities of that particular piece of pending legislation.

My point in raising this today, and I had not intended to, is that the reason we have all these ads in the newspaper is that the government pretends

we have no legislation right now when in fact we do have some legislation which is not being enforced.

Mr. Kanter: On a point of order, Mr. Chairman: As the member knows, I believe, the responsibility for enforcing this legislation rests with the local police force of her municipality. The Solicitor General has made it clear that the existing legislation is in force. If there are difficulties in the enforcement of the existing legislation, that is the responsibility of the local police force.

Mr. Chairman: That is an interesting point of information, but it is certainly not a point of order.

Mr. Kanter: However, I think there is some consensus among all members of this committee that there is a problem with the existing legislation. It is not tough enough. We are trying to make it tougher, and I regret that our activities are being frustrated by both opposition parties.

Mr. Chairman: That is not a point of order. That is an interesting point of information, but it is not a point of order.

Mrs. Cunningham: I do not mind. Honestly, I—

Mr. Chairman: Just let me interrupt. I have gotten us into this predicament through a lapse of consciousness by the chairman. I should never have allowed Mr. Kanter to get into this. As a matter of fairness, I am going to allow you to reply a little more and then Mr. Philip a little more, but then we are going to get back to the nuts and bolts of what this is all about. Having said that, I think you are all out of order, but it is my fault and I am going to give you a little more time to be out of order, and then I am going to give Mr. Philip a little time to be out of order.

Mrs. Cunningham: In fairness, Mr. Kanter would not have been able to produce any of that evidence, at least in the city of London, a year ago. He is able to introduce it now because of a lack of enforcement. When you have the Attorney General of this province standing up and talking about legislation that is not enforceable, I would say that is the kind of role model we have; therefore, people are not going out and enforcing the existing legislation, notwithstanding the reprimand I have just had from Mr. Kanter, which I am obviously not paying any attention to. I think it is a farce and I think the Liberals have made it a farce.

If you want to get political, we had legislation that worked in my municipality a year ago. We did not even know anything about this Sunday shopping problem. When I knocked on the second door in March of last year during the by-election, I did not even know what Sunday shopping was all about, until the public brought it to my attention and said they did not want to work on Sunday. If you want a political statement, we will give it to you, but we did not know in London that it was not enforceable.

Mr. Chairman: I do not want one.

Mrs. Cunningham: Mr. Chairman, you will have to take the brunt of it. It is your responsibility as a partisan member of this committee, or nonpartisan member of this committee, however you want to look at yourself, from day to day, from time to time.

The point is that we have a piece of legislation which no one expected

and which is not needed. We have legislation that is enforceable now. I have asked the question ever since this committee started, and I will end on this note: Show me where you cannot enforce it. Show me where the present legislation has not been upheld in the courts, which is the bottom line. No one has been able to produce a case for me where the present legislation has not been upheld in the courts. It is as simple as that. We do not need it.

If it is a problem for Mr. Kanter that it is taking too long, I would suggest that even the amendments that have been passed, a couple of the government amendments which we are trying to help now, because we know what the odds are—when you have a great big Liberal majority, you are faced with some legislation that will come into effect, maybe, during the term of this government. It is being held up somewhat through very serious debate because we are concerned about the implications, as members of the opposition. I would suggest that if this Liberal government were smart, it would find another way to sweep the whole thing under the rug or its members can all kiss their seats goodbye. It is as simple as that.

1640

Mr. Chairman: Thank you, Mrs. Cunningham. Mr. Philip, I do not want to limit you, but I would like to get back to Mr. Kormos.

Mr. Philip: No one is suggesting that there should not be tougher fines. The select committee—

Interjection.

Mr. Philip: If you'd listen, Mr. Kanter. Don't give me—

Mr. Kanter: I've been listening for 16 sessions—

Mr. Philip: You obviously have not listened to the public or you would not have section 4 in the bill, because in practically every presentation those who came before the committee told you to take section 4 out. What you have put in instead is pretty well a duplication of what the select committee on retail store hours, at a cost of \$90,000 to the taxpayers, recommended a couple of years ago.

You could have had legislation that implemented that select committee's report, that increased fines and that would have done it in a matter of a very small number of days. In fact, there were 19 recommendations. The government decided to move on one of them and it managed to get that particular piece of legislation, an amendment to the present act, through in something like 30 minutes in the House.

I had stated very early, as we started clause-by-clause, that our colleagues would be quite happy to move and put through the major number of the amendments in this legislation, those that reflected the select committee's report and those that the Premier said he was in favour of during the election and seems to have changed his mind about later, as long as you left out section 4—it would require a little bit of drafting to take out the appropriate areas that refer to section 4—but you chose not to do so.

You can have a piece of legislation that stops that stuff provincially tomorrow. All you have to do is say: "Fine. We'll stand down section 4. We'll move along with the rest of the bill." We can guarantee then that it will be through the House by Christmas.

Do not give us this nonsense that you have got one thing that you want to get through, that you are going to force it through no matter what the public says. A majority of the population are against it, a majority of the people who made presentations are against it, but you are going to hold out; you are going to force that through anyway. You are the one who is stopping the legislation from going through, legislation that would have corrected that at the time the select committee's report came in. All you had to do was follow the select committee's report and introduce your larger fines at that time.

Do not give us this garbage about us holding up law enforcement in this province. You can have this bill through tomorrow. All you have to do is take out section 4. That is the section that is objectionable to the public. That is the section that a majority of the people, whom you did not listen to very well, were opposed to in this province.

Mr. Chairman: Back on rail. I will try to stay awake so that I do not allow you to slide into objectionable areas again.

Mrs. Cunningham: The objectionable areas are those pieces of newspaper which have nothing to do with what Mr. Kormos was talking about.

Mr. Chairman: That was a royal "you"—all of you. Mr. Kormos, go back to your amendment. I am going to caution you to stay within the framework of the amendment.

Mr. Kormos: Just one moment. I have a feeling that Mr. Kanter was going to hold those newspapers up regardless of whether it was me speaking or Mrs. Cunningham or Mr. Philip. It was in response to my attempt to discuss what I perceived to be some possible problems or conflicts with this particular subsection as amended that he came up with the newspaper ads.

Mr. Chairman: No. I am awake. Subsections 7(1) and 7(2) have already been passed with reference to coercion, counselling and so on. We have gone far afield in terms of deciding whether that would effectively deal with the those who coerce or those who are coerced. We are now on to the question of your fine. I am going to restrict you to that, and that alone. If you go outside of that I will rule you out of order. As long as you are clear on that.

Mr. Kormos: If it is being suggested that the the motivation for pushing this bill along is the need to to create enforceability and a bill that has teeth, it strikes me as bizarre that Mr. Kanter would already have announced that he is not going to support an amendment that has with it a minimum fine. We discussed that at length.

The only objection that Mr. Kanter had to a minimum fine was the impossibility of a sentencing tribunal recognizing the most modest of breaches and recognizing a scenario wherein the minimum fine would have perhaps been unfair. That fear, if indeed it was a legitimate one, and it appears to have been, seems to have been resolved.

We recognize that this offence was far more repugnant than even a subsection 7(1) offence or an offence under the bylaw. As I recall it, we considered that in view of that, this particular subsection cried out for a minimum penalty to illustrate the added seriousness of forcing somebody who is weaker than yourself, not in a physical sense but, once again, with even more repugnance, economically weaker, organizationally weaker.

Mr. Kanter chastises other people here, saying the whole purpose of the legislation is to provide penalties that are meaningful and to create enforceability. You have an amendment here which has a penalty with teeth in it; subject to some of the considerations in subsection 7(1) and the bylaw under subsection 7(2)—and this is when I start to mention those, Mr. Chairman—it would appear to be enforceable. That is why I mentioned concerns about the words "counsel," "coerce" or "require."

When one hears Mr. Kanter's lack of concern about the fact that a coerced person, a coerced person this subsection is purporting to protect, could similarly be guilty of an offence under subsection 7(1), then maybe some people begin to doubt the sincerity of his argument.

You cannot have it both ways. Mr. Kanter's comments about newspaper ads and the status quo as he would perceive it are really not comments designed to expedite the passage of amendments which add teeth to the penalties, because just prior to raising those newspaper ads, he talked about being unwilling to support the concept of a minimum penalty, notwithstanding that the argument he had, and he only expressed one argument in opposition to it, is of no validity, of no weight whatsoever.

Obviously, the concern about not speeding up this bill is the concern about not giving store owners or plaza owners carte blanche to keep themselves open on Sundays during some of the most prosperous times of the year for those very people.

The heart of this bill is not its penalty sections. My goodness, the bill as it originally stood in subsection 7(2)—and I appreciate that amendments were made to subsection 7(2)—was absolutely discretionary with respect to a municipality's power. The bill as it originally was in subsection 7(1) put a ceiling on a penalty of \$50,000. This amendment emulates 7(1) to that extent but had to be amended, because, once again, talking about teeth, talking about real power, talking about real impact on an offender, it was not cognizant of the fact that many times a retailer can have a gross far in excess of \$50,000 on a good Sunday. These are the Sundays Mr. Kanter is talking about. It was only by amendment that the matter of gross sales was covered.

As I was instructed, on November 8 and November 15 respectively, Mr. Kanter and some of the other people on the committee purported to vote against minimum penalties. It seems that minimum penalties are the types of penalties that demonstrate teeth. When one talks about teeth in legislation, it is simply not gumming the matter to death but putting real teeth in so that there is some impact by way of a penalty, so that the penalty acts as a deterrent.

Quite frankly, one would hope, in view of the fact that there exists in our society great wealth, and that for some institutions the pursuit of profits—really, we are talking as much about the strength of the penalties, and Mrs. Cunningham spoke about this, as we are about the dedication or commitment of policing forces to enforcing the legislation.

1650

There is absolutely nothing in the bylaw provision which would give assistance to subsection 7(2) and its requirement that a municipality create a bylaw, recognizing that most municipalities in this province are ill equipped to enforce their existing bylaws. I say that absolutely. They are ill equipped because of the restraints they have in terms of budgeting and hiring bylaw personnel.

The fact remains that the bulk of enforcement should be borne by police within provincial jurisdiction. The bulk of enforcement should be borne by prosecutors within the provincial jurisdiction, now within the municipal jurisdiction.

The ultimate goal of the bill is where there is some lack of clear logic. Maybe the logic is so obscure as to be there but unrecognizable. But there is a lack of clear logic, because the thrust of the bill, the purpose of the bill, the motivation for the bill is basically to permit Sunday openings; it is to create an environment wherein people can even contemplate offences under subsection 7(2a). There is really no other reason for the bill, because as Mr. Philip pointed out, the goal of tough enforcement could be achieved by some very modest amendments to the existing legislation.

There is transparent demonstration of concern by Mr. Kanter for workers who will have to be working on Sunday. There is this transparent expression of concern by Mr. Kanter for these retailers, who appear to be opening quite brazenly, especially now during the month of December. Yet when the heart of this bill is section 4, with no controls—

Mr. Kanter: Mr. Chairman, what clause are we on now? Could you just assist me in what clause we are now considering?

Mr. Chairman: Subsection 7(2a).

Mr. Kanter: And what subject does that deal with?

Mr. Chairman: Fines, or more specifically, I suppose, a minimum fine.

Mr. Kanter: With respect to coercion and—

Mr. Chairman: Yes. That is why it was ruled in order.

Mr. Kanter: I just heard some talk about totally unrelated subjects. I was just wondering if we were indeed on this section.

Mr. Chairman: Go ahead, Mr. Kormos.

Mr. Kormos: Once again, it is the effort on Mr. Kanter's part to examine this piecemeal which betrays—and I apologize to him if I am wrong—some lack of sincerity about the goals he is seeking.

I would not feel compelled, in my grossly imperfect and perhaps ineffective way, to try to drive home the point that we need minimum fines, had it not been for Mr. Kanter boldly proclaiming that he is not going to support the concept of minimum fines. I would not even be as disturbed as I am about him saying that, had he not utilized as the main basis of his argument just a few moments ago the need for enforcement and the need for penalties which will act as a deterrent.

My God, all that illustrates to me is that maybe the exercise really is futile, because we are not talking about legislation which is going to require retailers to remain open; yet in fact we are, because that is going to be the net impact of the checkerboarding that countless numbers of people spoke to you about long before I was here, when you were on tour.

There is an element of compulsion, an element of coercion and requirement by virtue of section 4, yet we are restricting penalty sections here, presumably to individuals.

Mr. Chairman: That is why it is called clause-by-clause. Otherwise, we could sit here and discuss the totality of the bill ad infinitum on every clause that we dealt with.

Mr. Kormos: But that is why it is so dangerous—

Mr. Chairman: It may be dangerous, but that is a matter for the rules committee of the House to change. I am to keep you within the relevant sections according to 19—

Mr. Philip: The rules do allow you to point out if one section is inconsistent with another section.

Mr. Chairman: What rule is that, Mr. Philip?

Mr. Philip: Any rule. It is perfectly legitimate to say this particular section is not consistent with the bill.

Mr. Chairman: What rule? You point me to the rule and I will be—

Mr. Philip: You point me to a rule that says that someone cannot say section 5a or section 6a is not consistent with the objectives of the bill.

Mr. Chairman: Section 19(d)(2)(i): "...directs his speech to matters other than the question under discussion." That is the rule that I am relying on.

Mr. Philip: The question under discussion is whether the particular section is relevant and consistent with the objectives and with other sections of the bill. I say to you that is perfectly in order. There is no rule that you can show me—

Mr. Chairman: Is that a point of order that you are raising?

Mr. Philip: I am simply pointing out to you that if you are going to interpret the rules, then you had better understand what the rules are.

Mr. Chairman: I am interpreting —

Mr. Philip: There is no rule that says that—

Mr. Chairman: Then I take it you are raising a point of order.

Mr. Philip: I am simply saying that your comments to my colleague are not very well informed.

Mr. Chairman: Then you are raising a point of order. You are raising a point of order, are you?

Mr. Philip: I am simply informing you. I trust that your judgements will be better in the future.

Mr. Chairman: You are raising a point of order.

Mr. Philip: I did not say I raised—

Mr. Chairman: My point of order is that the rules—

Mr. Philip: You want me to raise a point of order, do you not?

Mr. Chairman: No. I could not care—

Mr. Philip: If you do not, then please allow my colleague to continue.

Mr. Chairman: I could not care less, but I have indicated to Mr. Kormos, and I will do it again, as with any member, that within the framework of the rules, if he directs his speech to matters other than the question under discussion, I will bring him to order. That is all I am saying. Go ahead, Mr. Kormos.

Mr. Kormos: Let me—

Mr. Chairman: I slipped when I let Mrs. Cunningham, Mr. Kanter, Mr. Kormos and yourself do that, but I am not going to let it happen again. So go ahead, Mr. Kormos.

Mrs. Cunningham: We got down to the basic problem, did we not, the present legislation working?

Mr. Chairman: Go ahead, Mr. Kormos.

Mr. Kormos: Let's understand this, Mr. Chairman, again with respect to your position here. None of these subsections or sections can be discussed in total isolation. Obviously, if there is not a relationship between one section to another, an impact on one section by another, then it is really so grossly disjointed as a piece of legislation that it does not warrant discussion at all.

Consideration of a bill or of a statute requires—and you know this, Mr. Chairman; you know that reference can be made to one section to help define the impact or meaning of another section in a piece of legislation. You know that. I know you know that, Mr. Chairman.

Mr. Chairman: There can hardly be any point to that, Mr. Kormos, if in fact we are doing, and that is what I said, clause-by-clause. The fact that you are going to refer to clauses that have not yet been passed would hardly be of any assistance to the clause we are discussing. That is precisely why I interpret the rule as meaning that you address the question under discussion, and I am going to confine you to that. That is my ruling and that is final. It is nondebatable. If you wish to challenge the chair, you can feel free to do so, but I am not going to debate it further with you.

Mr. Kormos: Could I say this to you? I am discussing subsection 7(2a) and the amendment to it. If what you say were the case, I should not even be talking about subsection 7(2a). I should merely be talking about the amendment to it, and that would put us in a—what you are trying to create, Mr. Chairman—

Mr. Chairman: No. If you are amending subsection 7(2a), you are entitled to address subsection 7(2a) because it is part of the question. Mr. Kormos, I am not going to debate it. That is my ruling. It is nondebatable. If you wish to challenge the chair, you have the right to do that; but subject to that, would you please get on and debate the question under discussion?

Mr. Kormos: I will say this. I am going to discuss the amendment to

subsection 7(2a) along with subsection 7(2a) itself, notwithstanding that subsection 7(2a) has not been passed and that we are merely discussing an amendment to it, because to do that would create an absurdity. Similarly, one of the rationales for the amendment was the matter of consistency, which necessarily makes us talk about subsections 7(1) and 7(2). Those were amendments that were passed by Mr. Kanter because that was the rationale for the amendment to subsection 7(2a): consistency with subsections 7(1) and 7(2).

1700

Mr. Chairman: If that were the case, Mr. Kormos, your motion would have in fact been ruled out of order because we have already discussed the question of minimum fines with reference to subsections 7(1) and 7(2). The only reason that I ruled your amendment in order was the fact that we were now dealing with a specifically different amendment dealing with coercion, counselling and whatever the other words were in subsection 7(2a).

Mr. Kormos: Quite right. But do not forget that the original motion is found in your package, and what it speaks of is being liable to "the same fine as is provided for a contravention of section 2, the regulation or the bylaw as the case may be." Because we recognized that subsections 7(1) and 7(2) had been amended successfully subsequent to this motion having been prepared, we said, "Let's deal with the matter of consistency." That is when we got into the business of repeating the language, which was "either a fine in the maximum amount of \$50,000 or gross sales whichever is greater," rather than merely saying "identical fines."

Then we recognized that subsection 7(2a) was a far more heinous offence. Also—because I have not been around here for a long time; just a short time—we questioned Mr. Kanter about why it was that the committee would have opposed minimum fines, and we were told that it was because they thought that the minimum fine was fixed. Then counsel made section 60 of the Provincial Offences Act available to us, and that countered the only argument that Mr. Kanter proposed—

Mr. Chairman: Mr. Kormos, with all due respect, you are challenging my ruling. The rules provide for you to challenge it if you wish. I am not going to hear any further discussion on subsections 7(1) and 7(2); they have been passed. We are now dealing with subsection 7(2a), and you will confine your remarks to subsection 7(2a). If there is any further debate on it—

Interjection.

Mr. Chairman: You are challenging the decision I have made. You have the right to appeal that decision if you wish; that is open to you. But at the moment we are dealing with subsection 7(2a) and that is where your further debate should be directed.

Mr. Kormos: It makes it a little bit more difficult because anybody who knows anything about this sort of stuff knows that you cannot discuss it in isolation or out of the context—

Mr. Chairman: You are challenging—Mr. Kormos —

Mr. Kormos: No. I recognize what you are saying—

Mr. Chairman: Well then do not debate it, because the rules do not allow it to be debated. You have a right, without debate, to challenge the

ruling of the chair. If you do not do that, then the chair's ruling is final and you are to proceed with debate within the terms of the question under discussion, subsection 7(2a).

Mr. Kormos: Prior to taking such a drastic step as challenging the chair, am I understanding you to say that reference to other parts of the bill cannot be made during the course of discussion?

Mr. Chairman: That is correct.

Mr. Philip: That is an absurd ruling.

Mr. Chairman: With reference to amendments that have been passed; because, if you turn the logic around, we have already debated the question of a minimum fine, and the reason Mr. Runciman's amendment to subsection 7(2a) was ruled in order was that it was dealing with a separate offence other than subsections 7(1) and 7(2).

Mr. Kormos: That is what I am trying to understand because, since I have been here a short time and I am going to be here for a while now, I want to understand it. Is the chair telling me that I cannot discuss other sections of a bill when one section is being discussed on the floor, let us say, by way of an amendment?

Mr. Chairman: No, I am saying that under rule 19(d)2, you are directing your speech to "matters other than the question under discussion." That is my ruling. As I say, you are debating my ruling. If you feel that my ruling is incorrect, you have the ability to be able to do what Mr. Philip has already indicated to you and challenge the chair. Other than that, it is nondebatable and we get back to the issue in question and you direct your question to that.

Mr. Kormos: Okay. It is, with respect, a silly ruling and I would challenge it.

Mr. Chairman: That may be.

Mr. Kormos: I do challenge the chair in that regard.

Mr. Chairman: All right. The chair has been challenged.

Mr. Philip: There is one member absent.

Mr. Chairman: It is for the members themselves to make that determination, is it not?

Interjections.

Mr. Chairman: All right. Fine. I am sorry. That is correct. Mrs. Cunningham, do you wish to have your full membership here for the vote on challenging the chair?

Mrs. Cunningham: Mr. Runciman is not here at the moment and, if we need another Progressive Conservative member, I would be happy to go out and find him.

Mr. Chairman: The difficulty you would have is that we are already beyond 30 minutes into the meeting and if that other member of your caucus

were to be here he would not be entitled to vote in any event. Do I gather from what you are saying that Mr. Runciman is not within the precincts of the Legislature and could not be here within the 20 minutes allowed under the rules?

Mrs. Cunningham: That is correct.

Mr. Chairman: I appreciate that. Thank you for your candour.

There has been a challenge to the ruling of the chair. Those in favour of upholding the ruling of the chair? Five. Those opposed? Three. The chairman's ruling is upheld. Please continue, Mr. Kormos.

Mr. Philip: You would not have voted that way when you were Deputy Chairman.

Miss Roberts: They would not have allowed me to vote.

Mr. Philip: That is why they removed you; you were too good.

Mr. Kormos: I think it is important that this amendment providing for the hybrid penalty be passed. The reason it is important that it be passed is so that it is consistent with other parts of the bill which I will not name.

The setting of one mere ceiling avoids the matter of there being retail sales in a retail business establishment that could be so gross as to warrant and attract a maximum penalty far greater than even a \$50,000 ceiling. The penalty here is one which is, in some respects, similar to other parts of the bill, and probably for good reason, because it provides for that penalty being imposed even when the offence, under other parts of the bill, is not committed but rather when there is a mere counselling or requirement or coercion of another person to contravene section 2, a regulation under section 4 or a bylaw under subsection 4(1).

Even though a person who is counselled or required or coerced under this section and would thereby be a victim, the person who was victimized by the counsellor or the requirer or the coercer, that person may, as we know, because of the reference to section 2, under which a person can commit an offence, to section 4, under which regulations are passed by which a person could commit an offence, or the bylaw under subsection 4(1), even though that person is a victim—and this amendment in this section deals only with that person as a victim—that person could also, as we know, be an offender in the very same or identical context, by virtue of what I will not discuss because this committee has already decided but which may now have new light shed on it, by virtue of the section proposed here and the amendment to it.

1710

If anybody is suggesting that the law here should have teeth, if anybody is suggesting that the law here should not be subject to the whims of a prosecutor or even the whimsy of a judge, it is imperative that there be minimum penalties. It is just incredible for anybody to suggest that minimum penalties should be done away with. I am on point now, am I not? I understand that this is not criminal law; I appreciate that. The only motivation for anybody to advocate an absence of minimum penalty would be the hope that, even in those municipalities where the behaviour spoken of is not permitted, in that case there is always the out, because there is an absence of minimum penalty. If for some reason a municipality shows strength in response to its

community by not altering the status quo—and Mr. Kanter waved a whole sheaf of newspaper clippings and newspaper pages demonstrating people willing to open on Sunday—when there is not even a fear of a minimum fine, really, then how effective is the penalty section?

Mr. Kanter is talking about enforceability. This is as difficult a section to enforce as any could ever be, because the section talks about somebody doing any one of the three things: coercing, requiring or counselling. As we discussed a little back on November 29, that requirement or counselling or coercing is liable to be done under such circumstances that the detection is highly unlikely, if not virtually impossible.

The people who would be inclined to do this are going to be people whose financial interests are being put ahead of the general welfare of not only their community but of the particular person they are counselling or leaning on. They are not going to pick sophisticated people. Surely, Mr. Kanter is not going to suggest that, all of a sudden, there are going to be all sorts of undercover bylaws officers with body packs on them, posing as employees of stores or tenants of plazas, so that these conversations could be recorded.

Similarly, surely, the type of coercion, requirement or counselling that is spoken of is unlikely to be a written one. It is unlikely to be proclaimed in front of a whole group of other people, because the person who is doing it, the person who is going to tolerate or condone wide-open Sunday shopping and Sunday working is going to recognize that, as much as it is profitable for him, it is disgusting to most of the community and it is not the sort of thing that he would want to broadcast, if for that reason alone.

Obviously, a more immediate motive would be the guarantee of profiting from tenants or workers doing what they were counselled or required or coerced to do.

Maybe it is grossly inappropriate to ask Mr. Kanter, because I recall him saying, "No way a minimum fine." I would not think he would simply vote against it without articulating his reasons for voting against a minimum fine, because that certainly would not be a very progressive position to take; to merely say "I am opposed to it," but not share with the rest of us and the public his reasons for being so. It could well be that once I heard Mr. Kanter's reasons for opposing a minimum fine I would withdraw that portion of the amendment.

There could well be persuasive argument made against the concept of a minimum fine. Merely to have the matter voted upon without there being an explanation of that position, without giving me an opportunity to learn something that I may not know, would be really unsuitable and would not be conducive to the smooth-flowing operation of this particular committee. I wonder if the chair might ask Mr. Kanter for his rationale so that I can either address that or accept the wisdom of his rationale for carte blanche opposing the minimum fine.

Mr. Philip: Maybe he has a little bit better rationale than he had in defending other segments of the bill which we are not allowed to talk about now.

Mr. Chairman: Order. Mr. Kormos, the nature of this exercise and of my function is to inquire whether there are any other members of the committee who wish to speak to the matter. I can ask that question, if you would like, and if any other member wishes to speak to the matter, he or she may feel free to do so and I will recognize him or her. Mr. Kanter.

Mr. Kanter: I would be delighted to speak to this matter. I will attempt to articulate my reasons. I will attempt to do so perhaps a little more concisely than Mr. Kormos. I have a feeling, no matter how persuasive I may be, at the end of the day or at the end of tomorrow or at the end of whatever day, Mr. Kormos may not choose to agree with my position.

There are two reasons why I am opposed to a minimum fine provision in this section. First, because it would be inconsistent with other provisions of the bill for other matters which, in my view, are equally serious. He has made the point in his view—

Mr. Philip: Madam Chairman, on a point of order: The previous ruling by the chair was that reference to other sections of the bill in order to rationalize or argue one's point was out of order. It would appear that Mr. Kanter is now referring to other sections of the bill that have been dealt with. If the chair is to be consistent, then Mr. Kanter must be told that those arguments are out of order.

The Acting Chairman (Miss Roberts): As my learned friend has indicated, I have just taken the chair and I heard very clearly what the chairman said with respect to standing order 19. I have not heard exactly Mr. Kanter's comments, but I would ask him to confine—

Mr. Kanter: Caution, caution, caution.

The Acting Chairman: Yes, caution, but also ask—not demand, but ask—that you confine yourself to section 7(2a) and the amendment that is before us.

Mr. Philip: The main point I am making is that I think Mr. Kanter's arguments are perfectly in order, and I am asking whether or not the chair would like to rule as to whether or not he was in order, as I feel he was, because I feel he should be given the right to refer to those other sections in order to make his arguments.

The Acting Chairman: You heard the comment that I just made with respect to that. I would ask Mr. Kanter to continue and to confine himself to the amendment that is before him, as best he possibly can.

Mr. Kanter: My second concern is that a minimum fine for coercion could, in some cases, lead to judicial overkill. I think Mr. Kormos expressed some concern for people who might not be of large means, who might be engaging in business but not be of large establishments, where there might be some counselling or coercion. Indeed, a requirement of a contravention of the law might be a first offence and in our view a minimum fine would not be appropriate. I realize—and I am sure Mr. Kormos is going to remind me of it in his reply—that there is a provision of the Provincial Offences Act which has been brought to our attention and which suggests that even where there is a minimum fine the court may, in the appropriate circumstances, disregard it.

1720

I think that cuts both ways. He is trying to put in a minimum fine which I am suggesting is unnecessary and could result in overkill. There may be some situations where the judge would be asked or directed by that legislation to disregard it. Anyhow, I do not really think it makes a great deal of difference. I have suggested that in some cases it might be inappropriate and I do believe it is inconsistent with other sections of the bill. I am not sure at this point whether I am allowed to talk about them or not.

Mr. Philip: Would you like to name those other sections, please?

Mr. Kanter: No, I have completed my comments Madam Chairman.

Mr. Philip: Madam Chairman, I would challenge Mr. Kanter. Since the basis of his argument is that somehow this amendment is inconsistent with other sections of the bill—

Mr. Kanter: You can challenge the chair but you cannot challenge me.

Mr. Philip: —would he name those sections? Because we obviously cannot accept an argument like this without his naming those sections. We do not know what he is talking about at the moment and he should name those sections.

Interjections.

The Acting Chairman: Order. I will have order, please.

Mr. Kormos: You will recall, Madam Chairman, what I had sought was some explanation from Mr. Kanter, before I finished, as to whatever logic might prevail. You have to understand that sometimes—and I understand it because there is a whole whack of people sitting around the table—the chairperson oftentimes may feel that he or she may be in a real push-me-pull-me scenario, despite every effort on that person's part to be nonpartisan, to be fair and to be just. Sometimes all of us find ourselves where we have painted ourselves into a corner, where we thought of a little piece of an argument and then buy another piece of that argument, and it becomes so horribly difficult for us then to recognize that we have been had, our pockets have been emptied, our shoelaces are gone. We are embarrassed.

Mr. Kanter: I take it you are conceding that you are not going to agree with me. Is that what you are going to do?

Mr. Kormos: No, we are embarrassed by what has been done to us and the chair may find itself in that embarrassment right now by virtue of having made a ruling that there cannot be any reference to other portions of the bill.

The Acting Chairman: That ruling was made previously. If you would like to speak further to your amendment, sir, would you please do so.

Mr. Kormos: I am just wondering if you wanted to reconsider your earlier ruling.

The Acting Chairman: I have not made a ruling with respect to it yet. I asked him to confine himself strictly to the amendment.

Mr. Kormos: No, I was speaking to the continuity of the chair.

The Acting Chairman: And I am indicating that I made the ruling that both of you confine yourselves to discussion with respect to that amendment.

Mr. Philip: On that comment, just to get a clarification, Mr. Kanter referred to other sections of the bill and said that my colleague's amendment, Mr. Kormos's amendment, would be inconsistent with other sections of the bill. Is it your ruling that if Mr. Kanter were to name those other sections he referred to, he would be out of order?

The Acting Chairman: I am not going to say anything further with respect to that. He did not name those sections. He is not required to do so. All I am asking is that you keep your comments confined to the amendment itself.

Mr. Philip: What I am trying to deal with is the straitjacket that the committee now finds itself in, as you can see. The government members have made an argument, but they cannot really make that argument because of the restraints of the ruling of the chair. Instead, they make do with generalizations which they cannot substantiate even if they want to substantiate. I have asked Mr. Kanter to substantiate his argument by simply naming those sections with which he says my colleague's amendment is inconsistent. He feels that he cannot do that because of the restraint put on him by the chair. Therefore, I am asking you, can you help us out of this by telling Mr. Kanter whether or not he would be in order if he were to name those sections with which he says this amendment would be inconsistent? I am asking you for a ruling on that.

The Acting Chairman: You are asking me to make a ruling on something that has not occurred. If Mr. Kanter wishes me to make a ruling with respect to something that may have occurred, if he would like to do so—

Mr. Kanter: It will not make any difference, Madam Chairman. I am not going to ask you to make such a ruling.

Mr. Philip: Let me just suggest this to you then: if Mr. Kanter feels that his arguments are not substantial enough that he could justify them, if he is using the straitjacket, which the former chairman has put this committee in, in order to get away with not having to make an argument or, in fact, to make an argument that would clearly be picked apart by the opposition, then he is free to do so. But I suggest to you that anybody who is watching can clearly see what is going on.

The Acting Chairman: Order. Is there any other member who wishes to speak to the amendment put forward by Mr. Kormos? Mr. Kormos.

Mr. Kormos: Thank you. We are still back at the point where some clarification had been sought from Mr. Kanter.

The Acting Chairman: You cannot seek clarification. If he wishes to speak to it, that is great.

Mr. Kormos: But I did seek it and it was offered.

The Acting Chairman: Would you speak to the amendment please, sir?

Mr. Kormos: Now I am following up on what Mr. Kanter volunteered and that is appropriate.

The Acting Chairman: Thank you. Would you please continue.

Mr. Kormos: Madam Chairman—

Mr. Philip: Why do you look so happy to be changing chairs?

Mr. Kormos: Mr. Chairman, I believe you were still here when Mr. Kanter commenced doing that. He was kind enough, voluntarily—and I appreciate that he cannot be called upon or required or coerced or counselled to—but he

volunteered some of his rationale, as he understood it, for opposing the minimum fine. In the course of doing that, and that is where you were not here, he made reference to other sections. He did not name them.

Mr. Chairman: I am advised by the clerk he did not name the sections.

Mr. Kormos: That is right. He did not name them but he made reference to certain other unnamed sections. Indeed, part of his rationale or one of his arguments—

Mr. Chairman: Excuse me. I think Mrs. Cunningham had it from the wisdom of the clerk that you can refer to the section number but you cannot debate the section over again. I thought I made that clear before.

Mr. Philip: He was not debating it.

Mr. Chairman: Well, you were. In any event—

Mr. Philip: Come on. If that is the ruling that will save your face, go ahead and make it, and then we will get on with the job.

Mr. Chairman: I am not attempting to save face at all.

Mr. Philip: It was a dumb ruling anyway, and you know that, and now you are trying to rationalize it.

Mr. Kormos: The paint is dry and that is okay, but you should make sure it is thoroughly dry or else you leave little footprints as you come out from where you were. Thank you, Mr. Chairman. In fact, I agree 100 per cent with the chair that we should not be debating sections or subsections that are not the subject of debate. But, my goodness, and your predecessor was reluctant—and she deserves your respect and all of ours—to do anything that would contradict what you had done earlier.

1730

Mr. Chairman: Mr. Kormos, I do not want continually to call you to order but you are back debating a ruling that I made, and whether or not it was silly, as Mr. Philip's said, it has, in accordance with the standing orders, been challenged and upheld by the committee. We are now debating your amendment to Mr. Runciman's amendment. Let us get on with that.

Mr. Kormos: What I am doing now is incorporating the information that Mr. Kanter gave us and trying to understand it, trying to interpret it in a way that it is in context and trying to explain to the rest of the committee why I am going to arrive at the conclusions that I am going to express.

To do that, I have to recap some of Mr. Kanter's argument in opposition to minimum fines. I am sure he felt under some constraint himself because the chair had made a ruling that you cannot mention other section numbers. So Mr. Kanter explained that this penalty section was inconsistent.

Mr. Chairman: I would like to come back, Mr. Kormos. Hansard will show when we get it, I think, and I stand subject to correction, that I indicated you could not debate—

Mr. Philip: No, that is not what—

Mr. Chairman: Only Hansard can show that when it is printed, but that was my understanding. If it is not what I said, it is what I intended to say. That is, you cannot debate sections which have already been passed by this committee; otherwise, what you in fact were doing was referring to a decision that had been taken by the majority of this committee. As far as referring to them I agree, if that is what I said, then Mr. Philip might be quite right that it was a silly ruling. But I do not believe I said that.

Having said that, there is no need to deal with that further. Let us get back to the amendment and if you wish to refer to what Mr. Kanter discussed in his reasons for opposing minimum fines, that is within the purview of the question before this chair.

Mr. Kormos: I can tell you this, if you did not refer us to the fact that we could not speak about other section numbers, I will apologize to you.

Mr. Chairman: That is fine. We will never know until the Hansard is printed. In the meantime, why do we not get on with the debate on the question in front of us.

Mr. Kormos: All right. Obviously we know, and that is the silliness about trying to abide by that kind of ruling, that Mr. Kanter was talking about 7(1) and the bylaw under 7(2). He is talking about consistency and he says that is one of the arguments against imposing a minimum fine.

He did not address the matter of this being a more serious offence. He did not speak of that, or of the fact that the model is the same. I agree with him that there should not be inconsistency as to the structure or the tone or the tenor of the penalty. The model is identical. Quite frankly, earlier on I had been reluctant, as I recall it, to include subparagraph (ii) in the penalty section. In view of the fact that this is a scenario wherein sales might not even be affected, because it does not require the second stage to commence, I had thought that would be not redundant but superfluous.

But the scenario was pointed out to me wherein the counselling occurs and then the act is committed. I recognized the logic of that. I amended or varied my amendment to coincide with that because I also recognize that it does not conflict. What we are confusing here is consistency as compared to not conflicting. It is more important that we look at it from a point of view that it is important that these penalty provisions not conflict with any other penalty provisions, as compared to consistency. The only reason I say we should look at it that way is because, for some people, it gives them a clearer view. Consistency, in my view, does not mean being identical. There is nothing inconsistent about this penalty section with the penalty sections in, dare I say it, 7(1) and the bylaw under 7(2).

It so happens that 7(1) and 7(2) are consistent because they are identical, but they do not have to be identical to be consistent. To illustrate that they do not have to be identical to be consistent, there were some very good arguments made during the course of it that being identical might even cause confusion, as compared to being merely consistent. But we recognized—and I am not debating or arguing subsections 7(1) or 7(2)—that it was important for them to be consistent. We also finally accepted that they both had the same penalty structures, and the reason was that basically they were the same offence, from many points of view, in many regards. One was identical to the other; the same evil thing was being done.

So that was a good reason to make them consistent—recognizing that

consistent does not necessarily mean identical—using the same model of penalty. The fact is, they were identical offences; the offences were committed in the very same way by the very same people. That was good reason to make the two penalties identical.

But we are talking about a very different offence here. We are talking about one that does not just victimize, in the most general sense; because there are some who do not understand the issue who might regard some types of Sunday opening as being in some respects victimless. Because of the ramifications, it is as victimless as a person who buys and smokes marijuana or what have you and regards it as being only his or her problem because it is nobody else's business.

Mr. Chairman: Excuse me just a second—

Mr. Kormos: Yes, sir. The ramifications, the ripple effect, the pebble-in-the-pond effect, are still there.

Mr. Chairman: Could I interrupt? I should not, but I will. I would like to ascertain from legislative counsel whether it is appropriate to have a double penalty for an offence.

Mrs. Cunningham: I can answer that.

Mr. Chairman: I should not even be asking it, but it strikes me that the Criminal Code says there shall be no penalty other than the one prescribed, and here you have a double penalty.

Mr. Philip: Where is the double penalty?

Mr. Chairman: According to your amendment, the person who would be convicted of coercion would be subject to the greater of \$50,000 or the gross sales and to a minimum fine of \$500.

Mr. Kormos: Yes.

Mr. Chairman: It is a double penalty.

Mr. Kormos: No more so than, let's say, impaired driving. Mind you, I bet Mr. Kanter's arguments about minimum fines would not extend to impaired driving. If they do, he should let the whole province know right now. For impaired driving, for even a first offence, there is a minimum penalty in a monetary value of \$300, yet there is a maximum prescribed. That does not create a double penalty. That is a standard minimum.

Perhaps Mr. Spring would comment on that, and perhaps Mr. Kanter would let us know that he opposes minimum penalties with impaired driving.

Mr. Chairman: Forget it. Forget that I even raised the issue, if we are going to get into that kind of thing.

Mr. Kormos: No, it is a valid concern. I can only raise one illustration of where I see it as appropriate. I am sure Mr. Spring would want to comment on it, because it was not something just off the top of your head. It was something you had thought about and had some concerns about.

Mr. Philip: If Mr. Kanter wants to be soft on lawbreakers, then we would like to know the extent to which that softness goes.

Mrs. Cunningham: I knew he would respond on that.

Mr. Kanter: Sounds like a Bush campaign ad. I would have expected more of you than that.

Mr. Chairman: I should probably go by the rule that says the chair shall be seen but not heard. Go ahead, Mr. Kormos. I am sorry, Mrs. Cunningham wishes to interrupt your discussion.

Mrs. Cunningham: You have raised an issue. I would just like to make a comment on it, that is all.

Mr. Chairman: Mr. Kormos has the floor. If he wishes to let you do that, it is fine.

Mr. Kormos: Obviously.

Mrs. Cunningham: Certainly, in New Brunswick there exists a minimum fine as well as a maximum fine. In fact, they are talking there about changing the legislation, saying that the current \$100 minimum fine is regarded by many store owners as a licence to operate. They are therefore saying that the minimum fine in New Brunswick is not effective and they are considering a larger fine. The suggestion is that fines up to \$1,000 for stores that break the Sunday opening ban be considered by the legislative committee which is doing its work right now in Fredericton.

I just wanted you to know that we are trying to keep in touch with what the rest of Canada is doing because we think, looking at our national identity, that is important. We are not particularly interested in what the Americans are doing but, given that this debate is taking place across the country, I thought you would like to know that if it is a law that should not work, it is one that is in effect in New Brunswick right now.

1740

Mr. Chairman: I am advised by legislative counsel that she has a comment to make, if that is appropriate.

Ms. Hopkins: If there is a concern that the language of the motion suggests there might be two fines applied, I am able to reword the motion to ensure that there is only one fine and that it is clear that the ceiling on the fine is either \$50,000 or the gross sales, and the floor on the fine is \$500. It would be a modest rewording.

Mr. Kormos: Sorry, Mr. Chairman, I understand now what you were speaking of. You saw "and" as a conjunctive. Again I am not good at the wording but, if I recall, the original was written, "but in no event shall the penalty be a fine of less than \$500" or words to that effect. Perhaps that is really the intent.

Mr. Philip: We had a similar problem with the wording on a similar motion.

Mrs. Cunningham: Just change the "and" to "or."

Mr. Chairman: Let me read what legislative counsel has suggested in light of my rather unfortuitous and inappropriate interjection—whatever that means. Mr. Kormos proposed that subsection 7(2a) of the act as set out in Mr.

Runciman's motion be amended by striking out "the same fine as is provided for a contravention of section 2, the regulation or the bylaw, as the case may be," and inserting in lieu thereof, "to a fine that is (a) not more than the greater of (i) \$50,000; or (ii) the gross sales in the retail business establishment on the holiday in respect of which the offence under this subsection occurred; and (b) not less than \$500."

Mr. Kormos: Once again, that may warrant more scrutiny down the road and that is the sort of scenario wherein the chair should welcome raising matters that have already been commented on, because there could well be some reflection on that by any number of people who recognize that there is a somewhat better wording.

You have raised these things, this whole effort, and that was Mr. Kanter's argument on behalf of deleting a minimum fine—the consistency argument. I have a question now. This is what happens when you look at these and discuss them and, hopefully, discuss them fruitfully. I have a question now about the definition of gross sales on the holiday in respect of which the offence under this subsection occurred. What happens then? Perhaps counsel could help in this regard. What happens when the counselling is of a very general sort? I could see that an offender who said, "Nudge, open Christmas Day and to heck with your workers and their families," but what if the counselling or the coercion were in a far vaguer or more general sense? Does this require that the counselling be with respect to a specific day?

Once again, when you get into trying to understand one of these sections where you even look at the penalty—what I am doing here is looking at the penalty section, and I am asking, does that restrict the manner or means by which the offence can be committed? Surely you want the general advocate of Sunday opening to be as guilty here of counselling as you would the person who specifically, because he is an employee, let's say—you will recognize that this extends to more than counselling, coercing or requiring employees or tenants, because you can counsel, basically, anybody on the street.

What happens when we have this penalty section that says, "in the retail business on the holiday in respect of which the offence under this subsection occurred"? I appreciate that we are talking of the two ways this is going to happen: one, where there is no subsection 7(1) offence committed or subsection 7(2) offence, and two, where there is a 7(1) or 7(2) offence. Obviously, if there is a 7(1) or 7(2) offence, you are going to—maybe I am just really not on track at this point and maybe that should wait, unless counsel wants to comment, because if I am all wet on that one, I will head on in another direction.

Mr. Chairman: I think what he is saying is that if somebody simply said, "Open up on a holiday" and did not name the holiday, how would you establish the holiday in which the offence occurred?

Mr. Philip: As an example, if some store operator wrote an article advocating civil disobedience or violation of this law, and rationalized it and encouraged others to disobey the law but was not specific as to a particular day on which they might stay open.

Ms. Hopkins: I think that the court, in construing this offence, is going to have to balance, on the one hand, freedom of speech incorporating or advocating a political position as against particular encouragement to break the law. Where the court will draw the line and how a court might read this section, that is a difficult call. I think the section is more likely to be

construed as being contravened if you counsel someone to break the law on a specified holiday. The more general your encouragement of breaking the law is, the more likely it is that you will be understood by a court to be exercising your right of free speech. I cannot give you a clear answer, Mr. Kormos.

Mr. Kormos: Further to the example that Mr. Philip gave you, what about a person who is an atheist and believes in wide-open Sunday shopping—and I hear what you are saying—who specifically says, "Christmas is irrelevant" or even worse, Easter, the holiest of all Christian holidays; suppose he said that was irrelevant and opened specifically on Easter, because you should not believe in the concept of the resurrection and so on? That is a similar example but one where, as compared to a general open-on-any-holiday, here you have a person who is a very distasteful person who would want to violate the holiest of all Christian holidays. How would this legislation deal with him? Would it still be the same thing? Would it still be so general as to perhaps take that person outside of the scope of this subsection?

1750

Mr. Chairman: I am going to leave that with legislative counsel because we have been requested to consider it to be six of the clock and adjourn in order that the Lights Across Canada ceremony can be conducted. Perhaps the Lights Across Canada will assist us in the sentence.

It now being six of the clock or thereabouts, we stand adjourned until tomorrow after routine proceedings.

The committee adjourned at 5:51 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

TUESDAY, DECEMBER 6, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. McGuinty

Hart, Christine E. (York East L) for Mr. Mahoney

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Farnan

Sola, John (Mississauga East L) for Mr. Polsinelli

Also taking part:

Cureatz, Sam L. (Durham East PC)

Clerk: Deller, Deborah

Staff:

Hopkins, Laura A., Legislative Counsel

Klein, Susan, Legislative Counsel

Witness:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, December 6, 1988

The committee met at 3:53 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 6:

Mr. Chairman: I recognize a quorum. I welcome the audience to the standing committee on administration of justice which is sitting and considering Bill 113 which is An Act to amend the Retail Business Holidays Act.

We are now in clause-by-clause consideration of that bill and there are certain amendments being debated by the members of the committee. The amendment was that of Mr. Kormos.

Mr. Philip: I believe it was Mr. Cureatz's turn to speak.

Mr. Chairman: Mr. Cureatz was not here yesterday, so it cannot be.

Mr. Philip: That is why it is his turn to speak.

Mr. Chairman: Does he need a mover to be here?

Clerk of the Committee: No.

Mr. Chairman: No, okay. Mr. Cureatz, the floor has been yielded to you by the honourable member for Etobicoke-Rexdale (Mr. Philip). You have the floor.

Mr. Cureatz: It would appear by virtue of the amendment of my colleague Mr. Runciman that there is a desire of increasing the penalties. That being the case, one would have to, of course, evaluate the overall essence of this piece of legislation with which I have some working familiarity. I suppose I could review all the various things that we have done—

Mr. Chairman: No, you could not.

Mr. Cureatz: —but in the event that the chairman would call me to order, I would hesitate to do so. As a result, if I have to restrict my comments solely to the amendment—albeit, I would probably be able to go far afield if requested to do so from my learned colleague in the official opposition—I might be able to find a word or two.

I can only imagine that the new member for—

Mr. Philip: Welland-Thorold.

Mr. Cureatz: —Welland-Thorold (Mr. Kormos)—how could I forget?—and learned in the law as he is, was anticipating that a higher fine would be a greater deterrent to those who were even considering the possibility of contravening the legislation in front of us.

If memory serves, it seems like only yesterday, although it was a month ago, that my colleague on my right had proposed something similar—

Mr. Philip: Except from a different party.

Mr. Cureatz: It all seems one great blur to me in terms of all that is trying to be accomplished and nothing much has changed and we are waiting with great interest to see what this large, very intolerant, Liberal majority government is going to do with this piece of legislation. We were anticipating items like this amendment would be in front of the Legislature before Christmas so that all the fine municipalities would have the opportunity to decide and, with great glee, we see that it has not come forward. As a result, no doubt in January, we will endeavour to progress at greater length the passage of none other than the possibility of section 6 to Bill 113.

As you, Mr. Chairman, have indicated you no doubt wanted all the fine people who are at home, and as I rushed to my office, observing the Amethyst Room on my television monitor—

Mr. Chiarelli: You forgot your makeup.

Mr. Cureatz: —having to change the station from one of the soap operas, I was thinking, with some interest—the soap opera being the assembly upstairs as we were whiling away the hours again on another emergency debate—it would have been far better to have the debate take place on Sunday shopping but I am confident we will have that opportunity as events unfold.

In any event, I know that you would appreciate the opportunity—

Mr. Chairman: I would appreciate your getting back to the amendment and, in fairness to you, since you were not with us yesterday—

Mr. Chiarelli: You could not repeat what you first said.

Mr. Cureatz: Watch me.

Mr. Chairman: —we are actually discussing an amendment by Mr. Kormos to Mr. Runciman's amendment. What it does—do you have it before you?

Mr. Cureatz: We have.

What I was going to do, actually—have I got it before me? Would I be speaking to an amendment if I did not have it in front of me, I ask Mr. Chairman.

Mr. Chairman: Well.

Mr. Cureatz: I assure the audience at home that of course I have the amendment in front of me. As a matter of fact, I was going to refresh their memory, albeit mine in due course, to take a very close examination of it.

Here is what it says. This is the amendment to Mr. Runciman's amendment.

"Mr. Kormos:

"Section 6:

"I move that the proposed subsection 7"— Speak of who should be in attendance, but I might as well conclude.

"I move that the proposed subsection 7(2a) of the act as set out in Mr. Runciman's motion be amended by striking out 'the same fine as is provided for a contravention of section 2, the regulation or the bylaw, as the case may be' and inserting in lieu thereof, 'to a fine of, (a) not more than the greater of (1) \$50,000 or (2) the gross sales in the retail business establishment on the holiday in respect of which the offence under this subsection occurred and (b) not less than \$500.'"

Mr. Chairman: Actually the wording of that was changed, I guess at my instigation, and the legislative counsel changed it to read—

There was some question about double penalty. Does anybody have that? Here it is here.

It was changed to read, and inserting in lieu thereof, "to a fine that is (a) not more than the greater of (1) \$50,000 or (2) the gross sales in the retail business establishment on the holiday in respect of which the offence under this subsection occurred"—and I think we changed it to the word "or" as opposed to "and"—

Mr. Cureatz: A very substantive change.

Mr. Chairman: —or not less than \$500.

Mr. Cureatz: That change alone, I am sure, would convince the members of this large, tyrannical government—especially the nasty member from Ottawa—to change their minds so that they would be voting in favour of the proposed amendment. Of course, the fine people at home would only want to know what the original amendment would be. I think we should refresh our memories again.

1600

My learned colleague, Mr. Runciman, who is now in attendance on my immediate left, after giving such an eloquent speech in the House in the emergency debate that was taking place, which I happened to see on television, was emulating none other than one of the finest members I have seen in these chambers, that great Tory from Durham East, albeit he left out the waving of papers in the right hand.

Mr. Chairman: Recognizing that august member is now with us, I wonder if you could get back to the amendment in question.

Mr. Cureatz: Mr. Runciman has moved section 6. I move that section 7 of the act, as set out in section 6 of the bill, be amended by adding thereto—

Mr. Chairman: What are you doing?

Mr. Cureatz: I am reading the original amendment. I thought the people at home would like to have their memories refreshed.

Mr. Chairman: We are dealing with Mr. Kormos's amendment to Mr. Runciman's amendment. We will get to Mr. Runciman's amendment in the fullness of time, whatever that means.

Mr. Cureatz: I just thought it might have been informative.

Mr. Chairman: Would you like me to do that?

Mr. Cureatz: There might be the slightest possibility, as my colleague indicated to me, that people at home might not understand what we are talking about.

Mr. Chairman: On November 29, 1988, Mr. Runciman moved that section 7 of the act, as set out in section 6 of the bill, be amended by adding thereto the following subsection:

"(2a) Every person who coerces, requires or counsels another person to contravene section 2, the regulation under section 4 or a bylaw under subsection 4(1) is guilty of an offence and on conviction is liable to the same fine as is provided for contravention of section 2, the regulation or the bylaw as the case may be."

On November 29, Mr. Kormos moved the amendment that I read earlier, and that is what we are debating at the moment.

Mr. Cureatz: Thank you. I know everyone is most appreciative of that. Indeed, we are looking at the amendment to the amendment.

Mr. Philip refreshed my memory that it is not dissimilar to that other great amendment, when we were in the other room, which I almost had the opportunity of speaking to, and I am so grateful that I was now called upon to come in attendance so that I may speak to this very eloquently put forward amendment.

One would want to know what the nub of the situation is. Indeed, it had passed my own mind in terms of what the meaning of this was. I can say to all of you that it is self-evident. It is self-evident to the extent of my only having the opportunity of concluding—I say to Mr. Philip, since he requested that I speak to this amendment—

Mr. Philip: Is there any parliamentary way of withdrawing my request?

Mr. Cureatz: —of concluding that, obviously, the aspect of the legislation proposed under the amendment to the amendment is of such degree as to act as, shall we say, a harsh deterrent, so that those who anticipate opening on that particular day designated as a pause day would not do so. After all, what greater way to stop such opening than to hit those individual owners in the pocketbook. By specifically designating a sum as set out in subparagraph (i), \$50,000 or, even worse, subparagraph (ii): "the gross sales in the retail business establishment on the holiday in respect of which the offence under this subsection occurred."

Mr. Chairman: Could I stop you for just one second? I do not wish to interrupt you, but I think in fairness, your not having been here previously—

Mr. Cureatz: That has never stopped me.

Mr. Chairman: —I should lay out the facts for you, as Mr. Runciman may or may not have. He may not have had the opportunity to.

It was originally indicated that Mr. Runciman's amendment, 2a, which I read out earlier, was supported by the government. Then Mr. Kormos initiated the amendment to Mr. Runciman's amendment. Does that help you?

Mr. Cureatz: Yes, I am in total support of the proposed amendment, as I always have been, working with the official opposition, albeit we were not at that post in 1985.

Mr. Chairman: Which amendment are you in support of?

Mr. Cureatz: Mr. Kormos's. Isn't this wonderful news? It is enlightening for you. I only wanted to conclude, so I might have the opportunity of carrying on with other various parliamentary aspects that are so important in these limited halls of democracy, that we are in full support of the proposed amendment and that I know only too well that in the fullness of time, indeed, if this large tyrannical Liberal government does not withdraw this legislation or for that matter support this amendment, the fine people of Ontario will reflect their concerns on this aspect of the legislation at that appropriate time when the Premier (Mr. Peterson) sees fit to call another election. I am sure there must be one or two other of my colleagues who would like to speak to the amendment.

Mr. Philip: I have reminded members of the various briefs that we heard as we went across this province that asked for minimum fines, so I am not going to repeat the list. But the fact is that the public, the merchants out there have asked for minimum fines. The Liberal government said that it set up the committee to hear from the public. In fact, a majority of the ideas of the public have been rejected by the Liberal members on this committee.

We have seen that in New Brunswick they are in the process of rescinding a similar bill and they are setting up once again a province-wide system and indeed their legislation has a minimum fine and the minimum fine is even higher than the minimum fine proposed in this amendment.

We have also seen that there are several pieces of legislation in this province that set out minimum fines or minimum penalties of various kinds. So I am asking the Liberal members to reconsider the briefs that were presented that they said they would listen to; reconsider what has happened in other provinces; reconsider other legislation that has imposed similar kinds of penalties, and reconsider that New Brunswick found that in not having a minimum fine it had the problem that, in its words and the words of Liberal members of the Legislature, "people saw the lack of a minimum fine as simply a licence to commit an offence."

I say, with all that, that this amendment is worth voting for rather than cause a 20-minute delay because some of our members are speaking on the emergency debate in the House. May I suggest that, if there is no one else on your list, we simply stand down the amendment and deal with the amendment and take the vote at the same time as we take the vote on the original amendment? That may save a little bit of time.

Mr. Chairman: We cannot vote on the motion until we have voted on the amendment.

Mr. Philip: If we are going to have to have a vote now, it will take me two minutes, provided that our member is not speaking in the House, to get him down here for the vote.

Mr. Runciman: When I left, Mr. Kormos was indeed speaking. He may be completed by now. I simply want to indicate, and I may have done this at an earlier stage, that I have no difficulty with this amendment to my amendment. Mr. Philip has said that we do not want to get into a debate at any length again about the minimum fine aspect, but Mr. Kormos has attempted, as he sees it, to address some weaknesses in my amendment, perhaps being more specific and, especially in respect to the gross sales aspect, perhaps my simply making reference to the same fine as provided for in contravention of subsection 7(2) was not adequate and not appropriate.

The element of this amendment to the amendment that is going to concern the government members is the inclusion of the minimum fine. I guess I am perplexed, not being present for all of the debate in respect to minimum fines, about the government's rigidity in relation to this particular issue. I do not see it as a major hurdle or a major problem for the government to at least consider inclusion of some sort of minimum fine.

1610

There may be implications in terms of doing it, in this one particular area, for other elements of the bill. I guess we would have to take those into consideration in due course. I think it is certainly something that, as we have mentioned in the past, provides a greater degree of flexibility for a sentencing judge. I think in some instances not having a minimum can make something of a laughing out of a sentence to a given firm or individual in respect to the sentencing process.

You can see dollar fines, for example, that certainly do not have the deterrent impact that I think all of us want to achieve as the final result of this legislation. I guess we would like to see other courses of action taken, but given the reality of a majority government, we recognize that unless the government comes to its senses we are going to have to live with this legislation in some final form. We think that they should take into consideration the very valid concerns that were expressed by both opposition parties in respect to the benefits of having some sort of minimum fine incorporated into the legislation.

I think that really covers my views on it. I wanted to have something on record in respect of that. I have not participated in the debate in the past in respect to minimum fines and I simply wanted to indicate that our party has no problem with this amendment to the amendment. We think it does indeed recognize some very real deficiencies in the legislation and perhaps an omission in respect to considerations that we gave in requesting the drafting of this particular amendment.

Mr. Chairman: I wonder, committee members, if in light of what Mr. Philip had said—

Mr. Philip: I am willing to go with the voice of wisdom.

Mr. Chairman: What I was wondering is if you wish time to get your members here. Could we do both your amendment and then do Mr. Runciman's subsection 7(2a) amendment, or is there any need for members to speak further on subsection 2a?

Mr. Philip: Why do we not just have a voice vote on this and then move on to Mr. Runciman's amendment?

Mr. Chairman: Would that do, Mr. Runciman?

Mr. Philip: It is going to be difficult to pull somebody out of the House when he is in the middle of a speech.

Mr. Chairman: Okay. Those in favour of the amendment by Mr. Kormos to Mr. Runciman's amendment?

Motion negatived.

Mr. Chairman: We now have Mr. Runciman's amendment to subsection 2a before us. Is there any further comment on that?

Mr. Runciman: I think I should make at least a brief comment in respect to this amendment. It has been indicated by the government spokesman, Mr. Kanter, that his party will be supporting this amendment. I simply do not want to take credit for the recognition of the inherent weakness in the government legislation. It was noted by Mr. Pope in one of his substitution appearances before the committee.

A lot of this ground has really been covered during debate on Mr. Kormos's amendment to the amendment when we talked about what we were—

Mr. Chairman: Excuse me for just a second. Mr. Philip, are you going to vote on this?

Mr. Philip: I am in favour of it. I am on record as being in favour.

Mr. Chairman: Why do we not deal with it before you leave?

Mr. Philip: I am just trying to get a couple of other members in, so that we can—

Mr. Chairman: We will get them in for the next one. In fact, we will recess for a couple of minutes to allow you to do that. I am sorry, Mr. Runciman. Go ahead.

Mr. Runciman: Now I am not sure where I was. Maybe I will have to start all over again.

Mr. Chairman: We will read it back to you.

Mr. Runciman: I have said at the outset that a lot of this ground has been covered in discussion at length on Mr. Kormos's amendment to the amendment. I think there was a recognition that what we are talking about here is probably the most distasteful act in terms of an individual who coerces, requires or counsels another person to contravene subsection 2. Essentially, I think Mr. Pope's intent and the intent of our parties is to try to deal with individuals, landlords and the owners of mall operations who may, through a variety of means available to them, attempt to coerce, pressure or—whatever terminology you wish to use—compel a tenant, for example, under duress, to open a business operation on a pause day.

We think that is something, and obviously the government agrees, which was a weakness in Bill 113 that our party has attempted to address. I must say that I am pleased to see the government indicate it is in support. As I mentioned earlier, there have been two or three instances where we have brought forward changes and, in contrast to their former practice, the

government members of this committee have indicated that they will be co-operative. As indicated, members of both opposition parties over the course of deliberations of this bill have pointed out any number of weaknesses and problems that are part of this legislation. Until the last couple of weeks, maybe it is a coincidence more than anything else, but since we have moved into the Amethyst Room and the proceedings have become televised, we are now experiencing a much more receptive approach on the part of some of the government members of this committee.

Mr. Ballinger: Name names.

Mr. Runciman: I do not want to get into naming names. I do not know if Mr. Ballinger has his makeup on today or not, but he still looks awfully pale. That is something Mr. Ballinger and I discussed the other day. I was concerned about his health. He explained the situation to me.

Mr. Ballinger: I just finished my cable program.

Mr. Runciman: You see, I have genuine compassion for my fellow man. In any event, this addresses that situation where the example we used is an owner of a mall applying threats or coercion to a tenant in order to compel that tenant to open a business contrary to the law and probably contrary to his or her beliefs as well. There are situations where that quite possibly could occur. We felt that the bill had to address that particular situation. Obviously we were quite comfortable with the amendments to our amendment that the official opposition had proposed. Be that as it may, the government has rejected that. We think that in any event, the amendment is going to in some way address a very valid concern for what most of us believe to be the most distasteful act with respect to contravention of the retail business holidays act.

Mr. Chairman: I am advised by the clerk that on the previous vote on Mr. Kormos's motion I should have asked for those in favour to so signify. It is not a recorded vote. Perhaps I will do it again.

Those in favour, perhaps could so signify.

Those opposed?

Motion negatived.

Mr. Chairman: We are now ready to deal with Mr. Runciman's amendment.

1620

Mr. Kanter: I think I can speak to that while it is being redrafted. Let me just indicate that we will be accepting the amendment with a slight technical change, which I do not believe affects the intent of the amendment, namely, a revision which will say "guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or the gross sales for the day," to be entirely consistent with subsection 7(1) and subsection 7(2), rather than the wording "the same fine," which Mr. Runciman has suggested.

I would like to ask Mr. Runciman to consider accepting that as a friendly amendment and the amendment could certainly stand in his name. I would point out that this is entirely consistent with the government position on this bill, that we are strongly in favour of stricter enforcement. Indeed, we had some discussion of this yesterday. That is why we want to get the bill

adopted because there are many provisions which will increase the enforcement provisions and there are a number of ads in the current papers that show that a current act is now being widely flouted.

I would also point out to Mr. Runciman that this is the third or fourth opposition amendment that we have accepted. We have also accepted previous amendments from the official opposition that would have a gross sales provision as well as the \$50,000 minimum fine. We previously accepted an amendment by one of the opposition parties to increase the notice period and the government party itself has introduced three or four amendments to strengthen the bill and in recognition of the many deputations we have heard on this item. These amendments have been widely spaced through the rather lengthy hearings we have conducted on this matter. I think that the clerk has almost completed the technical text.

Mr. Chairman: I can actually read it out.

Mr. Kanter: Perhaps you could read it out and see if Mr. Runciman is in agreement.

Mr. Chairman: Mr. Runciman moves that section 7 of the act as set out in section 6 of the bill be amended, adding thereto the following subsection:

"(2a) Every person who coerces, requires or counsels another person to contravene section 2, a regulation under section 4 or a bylaw under subsection 4(1) is guilty of an offence and is liable on conviction to a fine of not more than the greater of,

"(a) \$50,000; or

"(b) the gross sales in the retail business establishment on the holiday in respect of which the offence under this subsection occurred."

Mr. Runciman: Mr. Chairman, that is essentially Mr. Kormos's amendment minus the minimum penalty. We will see what Mr. Philip has to say but it is the best we can do. I think we recognize what Mr. Kormos was attempting to achieve was the appropriate way to go, although obviously we shared his view that there should be a minimum fine incorporated as well.

For unknown reasons, or reasons that are difficult for us to comprehend, the government is unwilling to comply with our request for a minimum fine to be incorporated. From my point of view, our party is prepared to accept the friendly amendment as obviously the best we can do.

Mr. Chairman: All right. Those in favour of Mr. Runciman's amendment?

Motion agreed to.

Mr. Chairman: We will recess for five minutes.

The committee recessed at 4:24 p.m.

1635

Mr. Chairman: We are back in session. The next amendment is one that is a New Democratic Party amendment, and I gather it is Mr. Hampton or Mr. Philip moving it. Which one is it?

Mr. Philip: Since I moved it originally, I guess I can move it again.

Mr. Chairman: All right.

Mr. Philip moves that the bill be amended by adding thereto the following section:

"6a(1) Upon the Legislative Assembly first sitting in 1990, a select committee of the assembly shall be appointed, to be known as the select committee on Sunday shopping, with authority to sit during the session of the Legislature.

"(2) The select committee on Sunday shopping shall consider the merits of the policy and objectives of this act and its effectiveness.

"(3) The select committee on Sunday shopping shall report its observations, opinions and recommendations to the Legislative Assembly not later than the second anniversary of the coming into force of this section.

"(4) If the select committee is not appointed or it does not report to the Legislative Assembly under subsection (3), this act is repealed on the second anniversary of the coming into force of this section and the Retail Business Holidays Act shall be deemed to read as it did immediately before this session came into force."

I had considered this amendment in terms of whether it was in order or not. I thought at first it might not be, because it appears to require the expenditure of public funds. I have had the clerk check with the Clerk of the House. He advises me that it is in order.

However, having read it right now, I have a concern about the question of whether it anticipates something that has not yet taken place; i.e., that the act is passed. Having thought that, I am not absolutely certain that—we are actually dealing with an amendment that deals with a hypothetical. If the bill is not passed yet, how can we deal with this section until the bill is passed?

Mr. Philip: Are you suggesting it should be the last section of the bill?

Mr. Chairman: I do not know. I am just saying that I have concerns and I do not want to rule on its being in order without asking the clerk to speak to the Clerk of the House and run that one by him. I wonder if we might recess to allow the clerk to do that, and if it is in order we will proceed with it. I have some concerns in that regard.

Mr. Philip: I wonder why you would have some concerns about this when in fact other legislation has sunset provisions in it. Therefore, if it is possible to pass sunset provisions in other legislation—and I can think of one, the government bill, the demolition one, which Mr. Kanter would be familiar with.

Mr. Kanter: The Rental Housing Protection Act.

Mr. Philip: Yes. That in fact has a sunset provision in it. The bill has to be re-enacted every year or every two years. There are sunset provisions built into a number of pieces of legislation. There are review

processes built in. If you look at, for example, the Metropolitan Police Force Complaints Project Act, which was introduced by Mr. McMurtry, that had a sunset provision or a review provision built into it. There are all kinds of precedents of bills that have passed in this House that have some review mechanism built into them or indeed even a sunset, so that the bill destructs after a certain period of time.

Mr. Kanter: Mr. Chairman, in effect you have allowed some argument by Mr. Philip as to why his motion should be in order.

Mr. Chairman: I would allow you to argue as well, since I have not made a decision.

Mr. Kanter: I would argue that it ought not to be in order. I do not feel this motion is in order and my concern is primarily on the first three subsections of the proposed section. The last section of course is contingent on a certain event occurring, or actually in this case not occurring, and therefore I would argue it is also not in order.

It is my understanding that this committee is now in clause-by-clause consideration of a bill that was referred to it by the House. As I understand it, according to Standing Committee Procedure, the function of this committee "is to go through the text of the bill clause by clause with a view to making such amendments in it as may seem likely to render it more acceptable." We are "bound by the decision of the House...in favour of the principle of the bill."

The principle of the bill has been set by the House and delivered to this committee for its detailed consideration. I will go on and read: "and must not amend the bill in a manner destructive of this principle."

1640

I would argue that it seems quite clear that the purpose of subsections 6a(1), (2) and (3) is inconsistent with the principles of the bill as sent for our consideration by the House; and, of course, subsection 4 is contingent on the select committee not being appointed. Therefore, I would urge you to rule the entire motion out of order.

Mr. Philip: If this is inconsistent with the principle of the bill, then every time the government introduces legislation and introduces a sunset clause, Mr. Kanter would have to argue, to be logical, that all sunset clauses are inconsistent with the purpose of bills. I find that to be a completely mind-boggling, ridiculous argument.

It is perfectly in keeping with any kind of legislation to say, "We are trying this at this point in time, there will be a review of this at some other point in time and, if a review does not take place, the bill destructs."

In fact, that is one of the major thrusts of a committee report turned out by the standing committee on regulations and private bills. That report suggests that we must build more sunset into both legislation and regulation, particularly into regulation, so that there is a review mechanism, so that we find out whether or not the laws we are imposing on the public are still relevant, so that we find out whether or not changes are being made, so that we find out whether the implementation of those laws is consistent with what was intended by the original legislators or by the original regulators, as the case may be.

To somehow argue that having sunseting or a review and/or sunseting is to go contrary to a unanimous report introduced in this House by a committee of this House which studied, in considerable detail, the regulations process. Indeed, it is to go contrary to legislation that already exists and that this government has used and reintroduced and that the Minister of Housing (Ms. Hosek), for example, has reintroduced in this House on two occasions as I recall.

Mr. Chairman: Just a second. Let me just clarify what my concern is so you can address that.

My concern is that, although this falls immediately before the effective mechanism, that is, royal assent, which brings the act into force, we have yet to deal with all the other sections of the bill which means that if we were to pass this—let's just hypothetically say this was passed and all the other provisions of the act itself have not been passed—we are left with this and perhaps one or more or all of the other sections not being passed.

All I am saying, Mr. Philip, is that I think—and I am prepared to hear more argument—it is in order, but I think it is premature to debate it at this point, before we have dealt with the other sections of the act.

I am not saying it is out of order per se. I am saying it is premature in that it anticipates an event that has yet to take place.

Mr. Philip: Mr. Chairman, every section of this act anticipates an event that has not taken place yet. The act in its entirety has not been proclaimed, so you can argue that with any section of this bill.

Mr. Chairman: Yes, you are quite right, except that this is a clause, I suggest, that is different than the other sections because what this clause does is to anticipate the existence of something. The others do not necessarily anticipate the existence of something. They are the sections that are to deal with the implementation of a principle. This anticipates that in, fact, you have passed everything else and that this is the last item to be passed.

Mr. Philip: Mr. Chairman, maybe you are able to split the number of angels on the head of a pin better than I am—

Mr. Chairman: I am not trying to do that at all.

Mr. Philip: —but I fail to see the point. The point that you are making, as I understand it, is that if this section passes then it is in anticipation of the whole bill passing. But that is true of all of the sections. If the whole bill does not pass, if the bill is not reported, then this section is not reported either, so it is no different from any other section of the bill. I fail to see your argument.

If the bill does not pass, how is this section any different from any other section that is not reported and passed?

Mr. Chairman: I hear what you are saying, Mr. Philip, and I certainly would like to consider that. I can do one of two things: I can either reserve judgement on the question of whether it is in order on the basis that I have indicated, having heard your arguments, and ask the clerk to speak to the Clerk of the House or, if you like, we could carry on with some other section and she could do that and then we will come back to it once I have a decision.

Mr. Philip: Why not proceed with this section? You can still at some point in time come back with any decision you wish. You do not have to vote on this today if you do not wish to.

Mr. Chairman: It is my understanding that a ruling on whether a section is in order or not in order should be made before consideration of the section. The clerk affirms that I am correct in that regard. Of course, the other way we can do it, we can do it by unanimous consent, I gather. Can we? We can do it by unanimous consent. If you wish to have unanimous consent, that is a second way. But I would suggest that in the interest of time—and because I do not want to make a ruling in the light of statements that have been made by both you and Mr. Kanter—we go back to something that we have stood down. Let the clerk go and speak to the Clerk of the House. If he says that I am wrong, then the ruling would be accordingly, we can go back to it. I do not think that is—

Mr. Chiarelli: Are you reserving your judgement?

Mr. Chairman: I am reserving my judgement on whether it is in order or not.

Mr. Kanter: Mr. Chairman, I suppose if you are reserving your ruling then of course we will be precluded from debating this today. I, for one, would look forward to a ruling from you on whether this particular section is in order.

Mr. Chairman: That is what I am saying: I am reserving my ruling subject to the clerk going up and speaking to the Clerk of the House. If the Clerk of the House says that it is in order on what I have just raised, then I would rule accordingly. All I am suggesting is that, to expedite matters, we allow the clerk to go and do that, and, in the meantime, we continue to sit and deal with some other section that we have stood down. Then when she comes back with the ruling, whatever it may be, I will either rule that it is in order or out of order. If it is in order then we will revert back to that section.

Mr. Philip: Mr. Chairman, because of the importance of this—and I feel very strongly about sunseting and I have done a lot of study and indeed, writing about it—I respect your prerogative to seek further counsel on whatever matter on which you should wish to seek it before making a ruling. I think the chair has a right to do that at any time.

But because of the importance and the nature of this, I would ask that you provide us with a written ruling because I want to know exactly what your ruling is and indeed, if you do rule in this way, I suggest that it may make for some interesting discussions in some of the parliamentary journals.

Mr. Chairman: All right. I gather you are only asking for that ruling if I rule against it? If the Clerk indicates to me that—

Mr. Ballinger: Is that a threat or what, Ed?

Mr. Philip: No, I just want to have it on the record.

Mr. Chairman: If the Clerk indicates to me that is in order, then I will not be doing that. But if the Clerk agrees with me that it is out of order, then I will have a written ruling presented to the committee.

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Mr. Chiarelli: On a point of order, Mr. Chairman: Can I ask that in your ruling you consider an item which deals with whether or not a section of an act or statute can take precedence over the Legislature in the sense of requiring a committee to sit or not to sit? I am asking you to please deal with that point in your ruling.

Mr. Chairman: I had considered that with the clerk. The clerk and I discussed that.

Mr. Chiarelli: If there is going to be a written ruling, I would like that point considered as well, because I think it raises some serious questions.

Mr. Chairman: I can tell you that I considered that and it is my understanding, and the clerk can correct me, that a legislative committee can in fact agree to any amendment. It then goes back to the House and would have to be passed by the entire Legislative Assembly, by a majority of the votes in the Legislature.

Mr. Chiarelli: But basically a section of a bill cannot override any future decision of the House. In other words, the House at any point could simply pass an amendment or decide to contravene the section.

Mr. Chairman: Which they can do on any one of the sections of the bill.

Mr. Chiarelli: I am saying it is a meaningless amendment, it is a meaningless section.

Mr. Philip: Anything we pass in this committee is a meaningless amendment because the House can overrule it at any point in time by passing contrary legislation. It is no different from any other.

Mr. Chiarelli: This has to do with the proceedings of the House. I think that puts it into a different ballpark.

Mr. Philip: It is quite common for committees to pass resolutions asking the House to do a series of things. Indeed, there are many reports that are waiting debate for this House that have whole elaborate structures, such as the report of the standing committees on public accounts which asks that a special estimates committee be set up, such as the report of the standing committee on the Legislative Assembly which asks for a special estimates committee to be set up and such as the report of the standing committee on regulations and private bills which asks for a series of changes to be made. If any of those reports are passed, they are the reports of the House.

Mr. Chiarelli: If I could just make a final comment, I am not an expert in parliamentary procedure, but I would like to see a precedent of a section of an act or a bill which requires a select committee to be established.

Mr. Chairman: The clerk tells me that is in fact how the standing committee on regulations and private bills came into existence, by a recommendation from a committee.

Clerk of the Committee: It is contained in the Regulations Act, to establish the standing committee on regulations and private bills.

Mr. Chairman: There is a clause in the bill that allowed that to happen. Okay?

Mr. Chiarelli: If you are going to do a written decision, I would still request that this be included in it.

Mr. Chairman: Mr. Philip is asking me for a written decision if I rule against the order of the bill. You are asking for a written decision if I rule in favour of the regularity of the bill. Is that in essence what you are asking?

Mr. Chiarelli: I think it is important that this particular issue be dealt with in your decision.

Mr. Chairman: All right. Can we then do as I suggested to expedite matters, move on to a section that we stood down? Do we have unanimous consent to do that?

Mr. Kanter: Yes, if you can find a section that we can do?

Mr. Chiarelli: Until later this afternoon?

Mr. Kanter: What section do you suggest, Mr. Chairman? I would certainly agree with that in theory, but what do you suggest?

Mr. Chairman: In the absence of the clerk, I think the next section that we would go to would be—we cannot go to section 3 because we agreed that that would be held down until December 12.

Mr. Chiarelli: I would go to section 4.

Mr. Chairman: We would actually be at section 4. I do not think I am going to get unanimous consent to go to that.

Mr. Hampton: No, you are not.

Mr. Chairman: I did not think I would.

Mr. Hampton: That is a brilliant deduction.

Mr. Chairman: We had left the definitions aside until the bill was completed clause by clause, so there is nothing to do. Perhaps we should—

Mr. Kanter: I do recall a motion, I believe it was by the Conservative Party, that dealt with the religious section. I think it was section 5 of the bill. We might be able to discuss it. I do not know if members have—

Mr. Philip: Why do we not deal with the one that deals with the auto dealers?

Mr. Kanter: We could deal with the auto dealers. That would be acceptable, Mr. Chairman.

Mr. Chairman: I am just trying to find that one.

Mr. Kanter: I am trying to find it as well. We might have to ask the clerk to—

Interjections.

Mr. Chairman: There is a motion for subsection 6(2) which is a government motion as set out in section 5 of the bill. Oh, that is carried. I do not have a copy of the one on the auto dealers. Do you have a copy of it, Mr. Runciman?

Mr. Runciman: Yes, I have a copy.

Mr. Chairman: At least I can read it into the record and we can debate it. Could we deal with the motion by Mr. Runciman to section 4 of the act?

Do we have unanimous consent?

Mr. Hampton: To deal with the motion by Mr. Runciman?

Mr. Chairman: The amendment to section 4 of the act.

Mr. Hampton: That would be fine. That is the automobile dealers?

Mr. Chairman: Yes. Mr. Philip, unanimous consent?

Agreed to.

Mr. Chairman: Mr. Runciman moves that section 4 of the act as set out in section 4 of the bill and as amended be further amended by renumbering subsection 1a as 1b and by adding thereto the following subsection:

"(1a) No bylaw passed by the council of a municipality under subsection 1 shall permit the sale of motor vehicles on any holiday."

Mr. Runciman: Mr. Chairman, I would like to make some brief comments at the outset. I have to leave for 10 minutes at 5:05 so, hopefully, the debate can carry on in my absence for about 10 or 15 minutes. It is a subject I think can warrant significant debate.

I certainly discussed this with a former colleague at length in respect to the need for this kind of amendment being included in Bill 113. I did not participate in the committee hearings throughout the course of the summer but I am led to believe that the automotive dealers appearing before the committee had the only organization during the hearings and the process to request an exemption such as the one that I have stipulated in this amendment.

There are a couple of facts that I would like to put on the record. Ninety eight per cent of the new franchised automobile dealers do not want to open on Sunday. They strongly believe in the common pause day and a quality life for the family. They employ somewhere in the neighbourhood of 40,000 people across Ontario and they want those employees to have quality time with their spouses and children.

We can get into this at length during the course of the debate, but they have drawn a number of examples to the attention of the committee with respect to other jurisdictions where comparable requirements are built into legislation similar to the Retail Business Holidays Act now before us.

The automobile industry in Ontario, unlike most other retailers, is governed by its own registrar. There are specific Ontario government regulations directed towards that particular industry. I think that obviously distinguishes them from the bulk of other retailers in this province. In spite of perhaps being the most regulated retail industry in Ontario, the auto dealers and their provincial associations have over the course of the years and several different governments been able to maintain excellent working conditions with the variety of ministries that they have to work with, the government. They have been able to work together harmoniously to refine and to introduce legislation that benefits the consumer.

Examples are the Motor Vehicle Repair Act, which was passed last year, and of course the Ontario Motor Vehicle Arbitration Plan, which was introduced by a previous government. In both instances the work was a joint effort and the automobile associations were very much involved in preparing, assembling and working out the final details of both initiatives.

There is no question that the auto industry, the automobile dealers have given leadership in encouraging the professionalism of the sales and management staff. A prime example is the Canadian Automotive Institute at Georgian College of Applied Arts and Technology. It is the only school in Canada that has a program for young people to learn the management and sales aspects of the auto industry. In fact, the legislative review project, in its directions report, isolates several industries for specific new pieces of legislation. One of those is the auto industry.

There is now a requirement for all salespersons and owners of dealerships to take a prescribed educational course. The course is yet to be determined but is in the process of being developed, and that course will ultimately determine who will be eligible to sell cars in this province or open a dealership in the province. Salespersons and managers continue to refine their professional status, encouraged by government legislation and industry requirements.

The industry itself believes and fears, I guess, that if it is forced, compelled to be open on Sundays, it is ultimately going to suffer in the sense that it is going to lose many of its excellently trained staff who will go to industry that the government does not encourage, through legislation such as the piece of legislation before us, to work on Sundays. Ultimately the industry is taking the position that this kind of legislation will have the end effect of seeing less professional staff involved in the industry.

The point I want to emphasize, and that I am sure Mr. Kanter will want to give consideration to on behalf of his party, is that the exemption that my amendment proposes is not unique, either in Ontario or in the United States. We can talk about some of the other legislation and use as examples some of the states in the US that have on the books legislation against the sale of automobiles on Sunday—a number of municipalities as well as state jurisdictions.

I have a copy of the Colorado Motor Vehicle Industry Licence Law and Regulations, which perhaps later I can table with the clerk for circulation to all member of the committee for their perusal and consideration. Colorado is an excellent example. Iowa, Minnesota, Illinois, Pennsylvania, Virginia, New England, Massachusetts—

Mr. Kanter: The state of New England?

Mr. Runciman: You are right. I assume it must be all of the New England states that they are making reference to here in the information they have provided me with. It is not specific about the New England states, so I have to assume, perhaps incorrectly, that the intent here is to indicate that all of the New England states have legislation on their books, but since you have raised that, I will clarify it with the dealers' association.

One municipality that is available, and the statistics they have provided me with, is the city of Detroit. Under the legislation in many instances we have talked about here, the offices and dealerships are closed as, similarly, are the liquor and beer outlets in the various jurisdictions. There are some exemptions now, apparently. Unfortunately the sale of an automobile requires the opening of a financial institution in certain government offices. For example, the registration searches for liens. So what would happen is two days, for example, when deals could not be consummated until the information becomes available on Monday.

I think the request that I am making through this amendment is eminently reasonable. Another jurisdiction that has legislation on the books similar to what I am proposing is British Columbia. The experience in that province where—pardon me, apparently that is one of the instances where they have gone the other way and the experience there where automobiles can be sold is indeed bearing out the fact that it does have the domino effect. The concern expressed by many in this committee and many of the witnesses who appeared before it is borne out by the case of British Columbia. The domino effect did occur. The reason was, obviously, that each individual business operator felt that he had to open in order to protect his share of the market.

I am a few minutes late now. As I indicated, I would like to depart for a few minutes and be back to participate further in this debate, but I have to leave for about 10 minutes to conduct a radio interview.

Mr. Chairman: Would you agree that we continue and have one of the other members debate it?

Mr. Runciman: Yes. I hope one of my colleagues will carry on in my absence.

Mr. Philip: I would urge support of this amendment. I indicated to the automobile dealers' associations and their various auto dealers as they appeared before this committee across the province that I had sympathy for what they were asking. I think that their association has worked closely with government over the years to develop regulations. We may not always think that the regulations are everything that they should be but one has, at least, to give the associations and the industry credit for being open to the provision of government advice. They are now providing advice on this matter.

Indeed, the dealers themselves came before us across the provinces and made, I think, some fairly strong arguments. First of all they made the argument that an overwhelming percentage, 98 per cent of the ones they polled, were in favour of an exemption under this act. They made the argument, which I think has been made by a number of other industries—the trucking industry I think has made the same argument with this government introducing deregulation in that industry—that an industry heavy in capital requires some stability and that the present system has provided some stability. It has provided stability in that they can tell a potential employee: "Here are the rules, as we see them. We are going to invest a certain amount of money in you and train you so that you can be a professional in this business and you can count on certain things."

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What this will do is it will destabilize that industry. There is no question about that. They have said, from their counterparts in British Columbia and Alberta, that it has created problems out there. They have said, Mr. Chairman, that it will have a ripple effect. It will have a ripple effect not just on the salespersons but also on others involved in the industry.

I think that the argument has been very clearly made, very persuasively made, that it is very difficult to say to a customer: "Yes, you can buy a car here on Sunday, but it requires a minor adjustment, and we don't have a mechanic available to do that minor adjustment. Therefore, you can buy it today, but you can't have it today." Or, "We think it's only a minor problem with this car, but we have nobody here who can really tell us and can look at it." So if you allow the municipalities, and all you will need is one municipality to open up, then you will have—I am sorry, Mr. Chairman. I am interrupting something.

Mr. Chairman: I am simply trying to ask the vice-chairman to take my place. You go ahead, Mr. Philip.

Mr. Philip: What you are doing then is having a ripple effect on the business, but you are also having a ripple effect, not just on this business, not just on the mechanics and on other people who are going to have to be available in the sales offices, but you are also going to have a ripple effect in terms of other services that are spinoffs.

I ask you: What on earth sense does it make that this government says to the municipalities: "You can open up any business you want. That's what this legislation is all about. You can open up any business you want, including, in this case, the auto dealers if you wish, but there will be no government offices open. You can open up any sales office, but for heaven's sake, you aren't allowed to open up the liquor stores"?

I ask you: What on earth sense does it make to have a piece of legislation whereby a car dealer will be open on Sunday, but the offices of the Ministry of Community and Commercial Relations will not be open, under the Personal Property Security Act? How do you buy a car if you cannot check to make sure that that car is clear of liens and that you are safe in buying that car?

If you are talking about that office being open, then, of course, you are talking about all of the regional offices where the liens might have been registered. You are talking about expanding the public service to be open on Sunday, as well. I say to you that you cannot do that by municipality. Here you are saying that the municipality may not open up government offices on Sunday, but you are saying the municipality may open up a business that cannot operate successfully unless certain government offices are open on Sunday, and that is a contradiction. What good is it to buy a car if you cannot check whether you are going to get clear title to it, that you are not going to have the bailiff then taking it away from you? What good is it to be able to buy a car if you cannot buy a licence plate?

You see, the municipalities are not only not able to allow the liquor stores to remain open on Sundays, but they are also not able to say to the government or, indeed, to the privately owned licence-plate offices: "You may stay open on Sunday." Unless I am sadly mistaken, under this legislation the Ministry of Transportation offices will not be open on Sunday at the decision

of a municipality, even though they are privately owned. Is that a correct understanding of this legislation? Maybe we can get an opinion on that.

The Vice-Chairman: I do not think anybody here is in a position to give you an opinion on that in terms of a legal opinion.

Mr. Philip: Mr. Spring can give an opinion on that.

The Vice-Chairman: I do not think that is a legal opinion at this point.

Mr. Philip: Would Mr. Kanter, as the parliamentary assistant acting for the minister, care to—

The Vice-Chairman: Mr. Kanter will be able to speak in his turn.

Mr. Kanter: I will speak when my turn comes, but I would ask Mr. Philip perhaps in the course of his argument to discuss whether the facilities he is describing—the servicing, licensing and financing facilities—are open at night or on Saturdays when most car dealers are open. Perhaps he might want to address that in the course of his comments.

The Vice-Chairman: I would like to keep the debate to nondialogue, if I can put it that way, and I would like Mr. Philip to continue.

Mr. Kanter: I was just responding to a request.

The Vice-Chairman: I agree, but from this point on I would ask the debate to continue in the normal form.

Mr. Philip: We are talking about opening up on Sunday. In fact, the car dealers are open every day and those offices I have mentioned are open on the same days that they are open.

Mr. Kanter: Evenings until 10 o'clock?

Mr. Philip: There are a number of government offices of various kinds that are not open until 10 o'clock.

The Vice-Chairman: Could we please eliminate the exchanges and stick to continuing the debate?

Mr. Philip: You are providing that on a particular day a dealership may be open, but all those things that are connected with that dealership are going to be closed. You can try to fuzz that any way you want, that is the case.

We are also talking about cost. We have heard the dealers appearing before us who have said that, in their estimation, it will raise the price of an automobile from \$150 to \$300 per car. We have seen what this Liberal government does in terms of auto insurance. They have brought in a system that is raising the price of automobile insurance. There is a debate going on in the House.

Interjections.

Mr. Philip: I know Mr. Ballinger does not like to remember that debate, because he is embarrassed by it. He is embarrassed by the fact that

the Premier, as with this legislation, said one thing in an election and did exactly the opposite in the House.

Mr. Kanter: Mr. Chairman, on a point of order: the member is straying an immense distance from the bill under debate.

The Vice Chairman: I think it was a slight straying and I would ask him to please exercise his discretion and stay on point.

Mr. Philip: I am obviously upsetting the members, because every time I tell the truth about the Premier's promises and how he breaks these promises, it is an embarrassment to them. They see those seats disappearing one at a time, slowly but surely, over the period of three years as the public becomes aware that this government or this Premier misled the public, said one thing in an election and is doing exactly the opposite.

Particularly in consumer legislation, this is exactly what is happening. Here is a piece of consumer legislation that is raising the price of automobiles just as surely as their legislation, which was supposed to stop automobile insurance from rising, which the Premier promised, is increasing automobile insurance by astronomical amounts. That is what the emergency debate is all about in the House today.

Mr. Ballinger: It does not even come close to Manitoba.

Mr. Philip: I would be happy to compare, as the Globe and Mail has done so well—

The Vice-Chairman: I would ask all members of the committee to please restrict their comments to the amendment before us, dealing with the sale of motor vehicles on a holiday.

Mr. Philip: I will be going up and I will give Mr. Ballinger the facts presented in the Globe and Mail, if he would care to read it, or in any of the other independent studies that have been done on Manitoba automobile insurance. I can tell you that any constituent of mine who has been in any of the western provinces and comes back here knows exactly who is telling the truth when they get their automobile insurance bill in Ontario.

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The Vice-Chairman: I would ask Mr. Philip to please come to order and refrain from talking about automobile insurance when the issue at hand is the Retail Business Holidays Act and this particular amendment.

Mr. Philip: What this does, as I indicated before, is add some stability. We have had auto dealers tell us—and I am sure they are right on this, because they know their business better than the members of the Liberal government who want to force this silly legislation on the public, even though they are not in favour of it—one after another, that good salesmen can sell any product. It can take a considerable amount of cost and training to teach them about the product, but once they understand the product, a person who has sales skills can sell a variety of objects. Good salespeople are in demand everywhere.

What the Ontario Automobile Dealers Association has told us and what individual auto dealers have told us across this province is that good salespeople do not have to work on Sundays in most industries, and they will have a

hard job holding on to many of their good, experienced salesmen if they can sell other products and not have to give up that common pause day when they are with their families.

Mr. Ballinger and others can disagree with them. The Liberal members on this committee can say to the auto dealers: "You do not know your business. We, as the Liberal government, as Big Brother, know your business better than you do. Therefore, we are going to do what we want, regardless."

Mr. Ballinger: Cut it out. You may have two people at home who might believe you.

Mr. Philip: I can tell you that the auto dealers believe me and they do not believe you. They believe you are insensitive to what they have asked for. That is what they believe. They will believe that the Liberal Party has not listened to them, unless it passes this amendment.

In the worst-case scenario—which is the one that has been argued by a number of people who have come before us—which sees this legislation leading us down the slippery slope to being simply another American style of shop-till-you-drop-every-day-of-the-week society, even a number of American states have seen fit to say that auto dealers are closed on Sunday, and they have legislated that state-wide.

We know it is only a matter of time before one auto dealer will open up or convince some municipality to allow him to open up, if you pass this legislation as it is. All the auto dealers are saying, "Give us some protection, give us some stability in our industry, give us an opportunity not to lose our best salespeople, not to encourage them to go into other industries where they do not have to work and give up their Sundays."

If the Liberals want to take us the American route, as they are doing in this legislation, at least have the foresight to put in one or two of the safeguards that even the Americans have put in their legislation and at least implement this kind of amendment that will protect people who as a group, as an industry, have said: "Give us this protection. Put it in."

No one is asking for auto dealers to be open on Sunday that I have heard. Certainly, the auto dealers are not asking for it. They have asked for this change in the legislation. Once again, we will see whether the Liberals are really listening, as they told the people they were when we went across this province, or whether they are simply putting on one more charade. We can tell this by how they vote on this amendment.

Mr. Chiarelli: Just a few brief comments on this particular amendment. I do not think the Ontario Automobile Dealers Association needs this protection. As a matter of fact, I think it is the prime example of a group that does not need any protection. Look, for example, at Montreal where, by choice, the automobile dealers are closed on Saturdays, a day when they have every legal right to remain open. There are other areas in Ontario where the members of the Ontario Automobile Dealers Association have come together and created closings on days when they could legally be open.

To suggest that the domino effect is going to affect the automobile dealers is just not in line with the truth and the reality of today's business practices. If anything, the automobile dealers are organized enough and, if I may say so, rational enough to be able to organize their affairs to remain closed on days on which they can legally be open now. I think, and I am not

exactly sure of the details, but in the Metropolitan Toronto area, at various times of the year, by agreement, they choose to remain closed. I think that is a credit to the automobile dealers' association. I also think that emphasizes very dramatically that there is going to be no domino effect under this legislation.

There are many other examples which we can use to indicate that the domino theory in fact is a myth. I know that the honourable member does not like to use that term "myth," but in fact the automobile dealers' association is a prime example that it is a myth because it has in fact been able to close, by its own choice, on days when it can legally remain open—for example on Saturdays. The argument that the province will have to provide personal property security personnel, in fact licence registrations—I think Mr. Kanter alluded to the fact—is also ludicrous.

These offices or agencies are closed on Saturdays. They are closed in the evenings when many, if not most, automobile dealers are open. It is a very normal practice that a deal is made at an automobile dealer and the paperwork is done the following day. Having said that, I will also predict for Mr. Philip, that there will be very few automobile dealers, if any, open on Sunday under this legislation. First, they choose not to open. They have established, in point of fact, that they can organize themselves to remain closed on days when they can legally remain open.

I just do not think that Mr. Philip has advanced any argument to support his domino theory which states first, that those few automobile dealers which are open are going to cause the prices of automobiles to increase dramatically, or, second, that they will not be able to do business because of the registration requirements. I think the automobile dealers' association is a prime example of why any business in this province does not need special protection. I urge that this amendment be defeated.

Mr. Philip: Mr. Chiarelli's arguments just show the very arrogance of this government, which I have been pointing to and which the public has been pointing to.

Mr. Ballinger: Why not be a little dramatic?

Mr. Philip: Mr. Chiarelli says that the auto dealers do not need the regulation that they are asking for.

The arrogance is there. Mr. Chiarelli has said to the automobile dealers' association, "You are asking for something you do not need." That is the equivalent of saying to a patient who is sick: "If you do not need to go to the doctor, then you are not really sick. You do not really need a particular cure then. You do not know what you are all about." The auto dealers have not asked for a regulation because they enjoy being regulated. I do not know of any industry that does.

Mr. Chiarelli says that it will not increase the price of automobiles, but the automobile dealers' association says it will, and it says that it has in fact in the west. Mr. Chiarelli says that the domino theory does not work. The automobile dealers' association points out that it, in fact, has. Just as the minister argued that the domino theory was a myth—

Mr. Chiarelli: The facts are not there? Where is —

Mr. Philip: I did not interrupt Mr. Chiarelli. I realize that he does not like to find out exactly what the truth is.

Interjection.

Mr. Chairman: You are out of order, Mr. Chiarelli. Go ahead.

1730

Mr. Philip: The fact is, just as the Solicitor General (Mrs. Smith) said that the domino theory was a myth, we have seen that 55 municipalities in British Columbia—all of them major ones, the larger ones around or adjoining Vancouver—are all open.

We have had the Ontario Automobile Dealers Association tell us that their colleagues in British Columbia are forced to stay open. We have even had an example, if Mr. Chiarelli had listened to the testimony before the committee, of where certain renegade dealers have already opened on Sunday, at certain times with certain sales, and caused hardships in some communities as a result of that. So to say that somehow the auto dealers, through a fraternal association, can control the actions of every auto dealer in the province, simply goes against not just the experience of the western provinces, where they have shown over and over again that it is blatantly untrue, but also the Ontario experience, where they have shown that in one or two communities there have been examples where that has not taken place.

If Mr. Chiarelli thinks he knows better than the Ontario Automobile Dealers Association about their business, I say that is arrogance. He can disagree with what they are asking, but for him to say that they do not understand their own business, that they do not understand that they do not need this, is just another example of the Liberal government's arrogance—forcing something on a group of people when they do not want it.

Mr. Chairman: Are there any further members or are we ready to vote on this? Is it Mr. Chiarelli or Mr. Kanter?

Mr. Kanter: No.

Mr. Chairman: Mr. Chiarelli first and then Mr. Hampton.

Mr. Chiarelli: As Mr. Philip knows, virtually in every community where this committee travelled, there was a submission by the automobile dealers' association from that particular locality or by automobile dealers from that particular locality. In every instance, of course, Mr. Davis, the executive director of the Ontario Automobile Dealers Association, was present. In almost every community the same arguments were made.

In particular, I can recall in Kingston—and I do not think that Mr. Philip was there with the committee on that particular day—the automobile dealers were asked point-blank about the ability of themselves to control their own business. In Kingston, they have been able to set their own hours of closing on Saturdays, and their hours of operation during the week, very successfully. They indicated in cross-examination that there had been no breaches and that no domino effect actually had taken place.

They admitted in Kingston that what they have is a fear. They admitted under cross-examination that the fear had no basis in reality from the practice in Ontario, as it has developed. So I think we have to keep in mind that we have a very strong association which is very well represented by an executive director. They are trying to dot the i's and cross the t's as best they can in the interest of the automobile dealers' association to the point of having special legislation enacted to deal with their industry.

I think that they do not need the protection, as I have indicated. There has been no evidence in Ontario that they are forced to open any extra hours. In fact, they have been able to close on Saturdays and during the evenings in the week very successfully without any problem to their industry.

Mr. Philip: Mr. Chiarelli says that is special legislation. I ask, is it any more special legislation than exempting the beer stores, than exempting the liquor stores, than exempting any variety of other stores, including the private vendors who sell licence plates?

Mr. Chairman: I may be wrong, but as a matter of fairness, I think they were already exempted under this act, as amended, were they not? They were already exempted under the Retail Business Holidays Act.

Mr. Philip: So were a variety of others.

Mr. Chairman: I realize that.

Mr. Philip: This is new legislation.

Mr. Chairman: I appreciate that, but in fairness, those things, beer stores, etc. were already exempted under the original act to which this is an amendment.

Mr. Philip: Under the original act, then, the municipalities did not have the right to go in and open any of the stores, which they are now being given in this act. You are obviously changing the game. I say to you then that if you are going to change it for one group you are not treating any group specially if you are in fact exempting other groups under these new rules. You have protected a variety of other types of stores from allowing a municipality to open them, but when the auto dealers come and say, "Even in the United States, we are exempted," then Mr. Chiarelli says, "Well, you guys are going to be able to have a good boys' club then and you are going to convince everybody to behave."

That is not the reality in Ontario. He is wrong when he says that. It may be the reality in the Kingston area but, in fact, we have had fairly clear evidence from the auto dealers before this committee in which they have given us examples where there have been people who have violated even the present statutes and have opened up at times contrary to the consensus that the Ontario Automobile Dealers Association thought it had arrived at.

Indeed, he says that the domino theory is a myth but the auto dealers' association says it is not a myth. In British Columbia and in Alberta, every auto dealer is now open on Sundays and the legislation that is being introduced here is a mirror of the legislation that was enacted in British Columbia. That legislation has created a situation every auto dealer is open on Sunday, contrary to the wishes of their association in British Columbia.

If Mr. Chiarelli is suggesting that somehow the auto dealers' association here in Ontario is so much stronger than the one in British Columbia that it will be an omnipotent force that we do not know of. That certainly is not the view of the auto dealers' association. They do not feel that they have that kind of power. If they felt they had that kind of power, they would not be asking for the change.

What we are dealing with then, is a Liberal government that is refusing to listen to yet another industry that says, "Here are the kinds of things

that we need in order to operate efficiently for our benefit but also for the benefit of the consumer." If you do not pass this you are voting, not just against the auto dealers' association, you are also voting against the consumer.

Mr. Hampton: I will defer to Mr. Chiarelli.

Mr. Chairman: You waived your right to Mr. Philip, so I am going to move to Mr. Chiarelli.

Mr. Chiarelli: I just want to clarify one point. I was not suggesting that the automobile dealers' association should not be before this committee, should not have come before the committee and should not have made its case. I think they came very legitimately before this committee as many other groups did. We had the Ontario Convenience Stores Association. We had the Bay. We had Hy and Zel's. We had all kinds of people representing different business groups, all with arguments for this committee, all dealing from time to time with specific sections, specific exemptions and specific enlargements that they hoped the government would adopt.

It was legitimate and appropriate that the automobile dealers' association should have come before us. I think in almost every case, where a group came before us with specific recommendations, there was hardly a consensus that a lot of the detailed recommendations and particular requests would be granted by the government or by this committee. As we know, the convenience stores association circulated a document yesterday where they want the pharmacies to remain at 5,000 square feet. The members of the third party have indicated they would prefer it to be higher.

We can go group by group by group when you look at the specific sections or subsections of the bill that they want. There is probably no consensus among, first of all, the opposition parties, and certainly not among the three parties.

In conclusion, I just want to say that I think the automobile dealers' association was very legitimately before this committee but I also think that, much to their credit, they have been able to manage their business in this province in a way that, in my opinion, does not necessitate a specific legislative exemption for them.

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Mr. Hampton: I am sure you will not be surprised that I want to speak in favour of this amendment.

Mr. Chairman: I was wondering what your position would be.

Mr. Hampton: I will take at least 20 minutes to lay it out for you in detail so you can be absolutely certain of what my position is and why I hold to that position. There will be no mistake.

First, I want to deal with a couple of fallacies of logic that I have heard expressed over and over again by some of the government members of the committee. The fallacies sort of go like this.

Wherever the government encounters a spokesman for a group or an organization who says that he is opposed to the government's legislation, or he is opposed to what he foresees as being the negative impact which the

government's legislation will have on his constituents who, he feels, will be the victims of a domino effect; wherever this happens, that spokesman says at the same time, "We are not affected by the domino effect at this time. We have not been forced yet to broaden our hours or open on the sixth day or the sixth evening or something to that effect," The government says the domino effect does not affect you or the domino effect is not that strong, the domino effect is a myth.

I think really this is a fallacy of logic. When people come before the committee, and many of them have, and they say, "Yes, we do not stay open on Saturday," or, "We do not have to stay open longer than, say, 10 hours a day," that is not proof that the domino effect does not work. It is not in any way proof of that.

What it is proof of is that there are values out there in our society which run contrary to and which counter the value of competitive economics or competitive business pressure. There are people out there who say: "No matter how lucrative it might be, no matter how much greater share of the market I might attach myself to if I stay open an extra evening or an extra day, I am not going to do it. I am not going to do it because I value other things more than I value getting a bigger chunk of the market or making more money."

If anything, what the car dealers have done in some parts of the province, in terms of remaining closed on Saturday, is simply to indicate their choice, their preference of values. Many of them said when they appeared before the committee that, in staying open only five days a week, they recognized they were losing some money but they value something else more. They value the quality of their life more.

To merely indicate that because, in certain communities, car dealers have organized themselves or have sat down and gone through a rational discussion and have said, "We do not want this Saturday opening," to me does not indicate that the domino effect does not work, to me does not indicate that there is not tremendous business pressure out there to stay open on a Saturday or a Sunday. It simply indicates that some people have some other values and I would argue some higher values.

Mr. Chiarelli: Dead wrong.

Mr. Hampton: I think the government is really barking up the wrong tree when it tries to say that evidence of one is proof of another.

The fact of the matter is that there is tremendous competitive pressure within the auto sales industry and we heard that in almost every community we visited. The first time we were visited by the Ontario Automobile Dealers Association, it indicated to us that it is one of the most competitive businesses, that it is a business where it is not unusual to see some people willing to come in to work very early in the morning, some people to work very late at night and, indeed, some people do come in and try to make sales on a Saturday. We heard that time and time again, that is indeed the effect.

I remember quite vividly when we first talked to them here in Toronto, they indicated that at one time there was almost a province-wide agreement; no Saturday sales. They will stay closed on Saturday. But they also indicated that not everyone is a member of the automobile dealers' association. In fact, there are several garages and several sales outlets that are not members of it. All that it takes is for one or two people to decide to stay open on a Saturday and the next thing you know, there is a tremendous pressure placed

upon the garage that may be four or five blocks away or even 50 blocks away in a city like Toronto, Hamilton, London, Windsor, Ottawa or wherever. That pressure starts to bear and the next thing you know, more and more dealers are opening on the Saturday. In fact, the rational agreement that was based, as they told us, on a quality-of-life argument not to open on Saturday has begun to crumble in Ontario. It has begun to crumble under competitive business pressure, which I define as the domino effect.

Once somebody feels that he can get more business or capture a greater share of the market over someone else and opens, it immediately puts pressure on other dealers in the industry to open as well in order to protect their share of the market. In fact, the auto industry is even more competitive in this sense, because some of the competitive pressure is imposed from above. It is imposed by the big auto companies, which insist that their dealers maintain their relative share of the market in their community or region of the province. We heard from the automobile dealers on that as well.

If you have a historical 20 per cent of the market in a given area and you are the Chrysler dealer and you suddenly, or gradually, start to slip in terms of your relative share of the local market, you will very soon have a visit from Chrysler Canada telling you that you had better pull up your socks and regain your market share or you may not have the franchise any longer. We heard that quite vividly.

Not only is the competitive pressure in the automobile dealers' industry imposed from below, that is, from competitive pressure from other dealers in the industry or community, it is also imposed from above by the big auto makers themselves. I think it is a distortion of the facts, a distorted description of that market, to say that the domino effect does not apply there. We heard over and over again factual statements, illustrations and vivid descriptions of how it works from below and above.

I think what also has to be considered in this debate is the fact that in terms of the structure of the automobile industry, it is likely to become more and more competitive in the next few years. This was not evidence we heard before the committee, although one of the automobile dealer groups that came here did refer to it. The indication is that with more and more foreign-made cars, with more and more car companies from either Japan or Korea now constructing cars in Canada, you are going to see a pressure in large and small communities to open even more automobile dealerships. In fact, the competition among the dealers who are already there to retain their relative share of the market is going to increase rather than decrease.

I see Mr. Chiarelli shaking his head, but I wonder really how the competitive pressure cannot increase if you have Hyundai, Toyota and Suzuki now wanting to sell their made-in-Canada cars. Does Mr. Chiarelli think that they are going to hold giant raffles and sell them off that way? Indeed, they are going to want to get dealers in towns across Ontario so that they can seize what they consider to be their share of the automobile retail market. If anything, the auto sales industry is going to become more competitive.

Mr. Chiarelli: Someone in all the municipalities will get a commission on the sales.

Mr. Hampton: There is going to be even more competitive business pressure. Now I hear that Mr. Chiarelli is repeating what I call the crass municipal arguments. I can only suggest to Mr. Chiarelli—I will not go into detail in refuting what he is saying—that I know and he knows that things are

a little more subtle than that at the municipal level. One need only look at, for example, the municipal political evolution that has taken place in a city like Toronto over the last 10 years. He will understand that competitive business pressures come very much to bear at the municipal level, but they are much more subtle than he indicates by his interjections.

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Mr. Chairman: Mr. Hampton, if you do not respond to his interjections, then there will not be further interjections from him or any other member of the committee.

Mr. Hampton: I enjoy responding to those interjections because they are easy targets.

Mr. Chairman: I enjoy them too, but they are out of order.

Mr. Hampton: I am sorry, I cannot refuse an easy target.

Mr. Philip: He does a lot more for our arguments than you or I do for our arguments, actually.

Mr. Hampton: Yes, we have said that before, that we hoped Mr. Chiarelli would continue to talk. Our arguments would be reinforced and made better.

Mr. Chairman: If you and Mr. Philip would like to go out in the hall and carry on your conversation, go right ahead.

Mr. Hampton: I want to bring all of this again back into focus in terms of this amendment that has been proposed by Mr. Runciman. I congratulate Mr. Runciman on his reasoning here. Part of the rationale that we have heard from the government in terms of the municipal option, in terms of leaving this open to municipalities to decide, is that it would assist with the tourist industry. In a city like Toronto, the tourist industry is very diverse, so you want to have it so that people who visit Toronto can, if they wish, buy a new Mercedes-Benz or an antique Mercedes or an antique Volvo or whatever.

Mr. Philip: And take it back to San Francisco.

Mr. Hampton: Or wherever they may want to take it. That has been the argument; it would allow for the enhancement and for local decision-making on these kinds of things.

My colleague Mr. Philip pointed out that in order to fulfil a transaction for the purchase of a vehicle such as this, there are licensing requirements. In certain cases, you may want to check with the personal property security registration branch to ensure that the person who is selling the vehicle indeed has title to it to be able to sell it or that there are no other interests which may affect the property you want to buy—in this case, an automobile.

Now, as Mr. Philip pointed out, none of the government agencies that you would need to do business with to complete the transaction is going to be open at this time. In his interjection, Mr. Kanter said, "Well, they're not open on the weekday evenings either." Mr. Kanter misses, I think, the fine point of what the government's argument was. The government wants to open up the weekend shopping. It wants to permit municipalities to express their will in terms of a local option.

There is a distinction between making this kind of purchase on a weekday and making this kind of purchase on a weekend. Someone who lives in the community, for example, can do all of the searches, make all of the inquiries as to licensing during a given day and then, that evening, complete the deal with the automobile dealer. That is, in fact, what often happens. In certain cases, if he lives in the community, he may choose to do some of that the next day.

But in terms of the so-called enhancement of the weekend tourist industry or using this specific element of the local option for enhancing the tourist industry, it is totally out of whack on weekends. In fact, you run into the kind of situation that was spelled out to us by a gentleman who appeared before the committee and was not talking about automobiles. He was talking about china. He owns a well-respected and reputable china shop, a gift shop in downtown Toronto, and he said, "If you want to enhance tourism, this isn't going to do it, because I find that if people really want to buy my china, they are going to stay over and do it some other time."

Mr. Chairman: Is that a new car—"China"?

Mr. Hampton: It may be, Mr. Chairman. Coming from Brampton, you probably know more about cars than I do.

Mr. Chairman: Could you maybe come back to the track?

Mr. Hampton: I will come back to it. The point is, however, that since someone could not do any of the searches on a weekend anyway, could not do any of the licensing inquiries and might not even be able to get a mechanical fitness, in certain circumstances, it makes all the sense in the world simply to say to the auto industry: "The local option just doesn't fit you people. It just doesn't make any sense, so why don't we put the automobile dealers right outside the local option? Why don't we solve the problem right off the bat?"

Why open a Pandora's box where you may have increasing business pressure to open on a Sunday, given the fact that the automobile industry is going to become more competitive in sales anyway? Many of the things that you will need to do in order to complete a sale, especially if it is someone who is visiting a city or a community on a weekend, in terms of tourist purchases, you will not be able to complete, in any case.

Why not simply take them right out from under this act and do the commonsense thing right off the bat? They do not belong there. They really do not belong within the scheme of this act. For what they have to sell, the licensing and regulatory and financing requirements that would need to be fulfilled cannot be fulfilled on a Sunday or, for that matter, any time during the weekend, so why not take them right out from under the act and simply put it in the act that they are not part of the so-called local option?

Are you clear now, Mr. Chairman?

Mr. Chairman: Thank you very much.

Mr. Philip: We now know how you will vote in a tie vote.

Mr. Runciman: I just want to get into this in a little more detail. I do not know if the government has—certainly not while I was present in earlier discussions—indicated its position with respect to this particular motion.

Mr. Philip: Mr. Chiarelli was on line for the government's position.

Mr. Runciman: Was he authorized to do so?

Mr. Chiarelli: There will be extensive remarks in Hansard.

Mr. Chairman: If I am able to garner from his comments, I do not think he was speaking in favour of the amendment.

Mr. Hampton: On the contrary, I thought he was helping our arguments immensely.

Mr. Runciman: I know of previous occasions when Mr. Chiarelli spoke out and we noticed Mr. Kanter quickly run to his shoulder and whisper in his ear and, magically, his views changed almost instantly with respect to the position he had been enunciating. I hope this is not a similar situation.

Mr. Chiarelli: You followed my advice on the fines.

Mr. Runciman: I would not want to see Mr. Chiarelli embarrassed to any further degree than he has been during these deliberations.

Mr. Chairman: Perhaps you can get back to the amendment, if you would.

Mr. Philip: What makes you think Mr. Chiarelli does what Mr. Kanter whispers in his ear?

Mr. Chiarelli: I am the only thing that keeps you guys awake on Monday nights.

Mr. Philip: I can think of a few other things.

Mr. Chairman: The clock—

Mr. Runciman: That is an appropriate suggestion, Mr. Chairman.

Mr. Chairman: We are in recess until next Monday after routine proceedings.

The committee adjourned at 5:59 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

MONDAY, DECEMBER 12, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. Mahoney

Hart, Christine E. (York East L) for Mr. McGuinty

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Revell, Donald L., Senior Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witness:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, December 12, 1988

The committee met at 3:57 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Chairman: I recognize a quorum. It is now three minutes to four and, notwithstanding what I said before about wanting to have a member from each caucus here, I think we eventually have to get on with the process.

Mr. Runciman: On a point of order, Mr. Chairman: As I indicated to you, I would like to have a clarification of the rules in respect to this matter, if the quorum is simply a question of pure numbers or if there is some requirement in the standing orders in respect to representatives of all parties.

Mr. Chairman: We did have agreement at the public hearings to go with just a quorum, even if it did not represent all three parties. I have spoken with the clerk and she has indicated that we did not have it for clause-by-clause, but that we wait a reasonable period of time. I think we have now waited just about half an hour. We do have members of the public here and I think, in fairness to them, we should at least start. The clerk has something to say. It will probably be far more astute than what I just said.

Clerk of the Committee: Just to clarify, Mr. Runciman, a quorum in committee is half of the members plus one. It has nothing to do with all parties being represented. Technically, a quorum is five members plus the chairman.

Mr. Runciman: Okay, fine.

Mr. Chairman: I told you it would be more astute than what I would say.

I am going to ask the clerk where we were when last we met.

Clerk of the Committee: Last Tuesday, the committee was in the middle of discussing an amendment moved by Mr. Runciman on subsection 4(1a). However, the committee had also made an agreement to revert back to section 3 on Monday, December 12. So it is whatever the committee decides.

Mr. Kanter: It was my understanding that, with the agreement of all parties, we were going to debate at long last the subject of drugstore sizes. All parties agreed to that and it is my understanding that is where we will commence our hearings today.

Mr. Runciman: I know that Mrs. Cunningham did speak to Mr. Kanter in respect to this. I guess if the majority of the committee decide that is what we are going to do, we are going to have to do it, but I want to indicate that

you are doing it without the support of our party and, I suspect, without the support of the official opposition.

Mrs. Cunningham expressed concern about her inability to be here. Because of commitments as critic for the Ministry of Skills Development, she has to attend the estimates. I think Mr. Philip is in much the same boat for the New Democratic Party.

I know Mrs. Cunningham indicated as well to Mr. Kanter that the question of drugstores and pharmacies was again going to be discussed at the Progressive Conservative caucus meeting. Mrs. Cunningham, as you know, has submitted an amendment with respect to the square footage. Apparently, she does have some new concerns with respect to this whole question and wished to take them to caucus for further direction.

Mr. Ballinger: Upward concerns or downward concerns?

Mr. Runciman: You will have to talk to her.

Mr. Chairman: Mr. Ballinger, Mr. Runciman has the floor.

Mr. Runciman: In any event, I wanted to make that appeal to other members of the committee, knowing that obviously Mr. Kanter was not going to address the situation with respect to Mrs. Cunningham's appeal to him on at least two occasions.

Mr. Kanter: I would like to respond somewhat further to Mr. Runciman's comments, because they are typical of the opposition's tactics of delay, stall and obfuscation that have marked the opposition's tactics throughout these hearings.

Mr. Runciman: That is just a bunch of hot air. Mr. Chairman, on a point of privilege: Mr. Kanter can make those charges and I can make all kinds of charges. I guess it is a question of interpretation, but both opposition parties feel they are playing a constructive role here and representing the interests of many consumers across this province which the governing party has failed to recognize.

Mr. Chairman: That is not a point of privilege, but your comments are noted.

Mr. Runciman: It is certainly a point of privilege with respect to the fact that Mr. Kanter is laying claims with respect to the actions of the opposition parties which I believe are totally inaccurate.

Mr. Chairman: I think if it is construed as inferring any type of intent to a member, I would agree. Perhaps you can speak in a less difficult way.

Mr. Kanter: Are you suggesting that my comments were out of order?

Mr. Chairman: No, I am not.

Mr. Kanter: Thank you. I will continue. I think the tactics shown by Mr. Runciman today are typical of the delay, obfuscation and stalling that have been characterized by the opposition throughout this debate.

Mr. Runciman: Mr. Chairman, on a point of order.

Mr. Chairman: A point of order takes precedence over the person.

Mr. Runciman: Mr. Chairman, I disagree with your ruling with respect to this matter. I do not think that is appropriate. Mr. Kanter is assessing motives with respect to what the opposition parties are attempting to accomplish throughout this hearing process. I think his choice of adjectives is inappropriate, to say the least, and I would ask him to withdraw, through direction from the chair.

Mr. Ballinger: That's no worse than you accusing us of being in the pocket of Cadillac Fairview.

Mr. Chiarelli: The trouble is, you guys can't make up your minds what you want.

Mr. Runciman: I think this is a clear indication of why we should have representatives from all three parties present. The lone opposition member here is obviously being ganged up on by this huge Liberal majority.

Mr. Chairman: Once again I am going to endear myself to my colleagues. Mr. Kanter, I think Mr. Runciman has indicated reasons why Mrs. Cunningham is not here, and Mr. Philip—I am not sure if he spoke to that matter.

Mr. Kanter, I would have to say that you are coming pretty close to imputing motives to other members, which is not in order. I wonder if maybe you could address it in a different way. Mr. Runciman is here and I do not think it is fair that motives should be imputed to him.

Mr. Kanter: I think it is important that we get on the record the history of the treatment of this particular motion dealing with drugstores. Would that be permissible?

Mr. Chiarelli: In view of the fact that they are asking to reorder business again on that point.

Mr. Kanter: Surely the issue of determining how we deal with this particular clause, which has been deferred for many weeks, is relevant.

Mr. Chairman: Just so you all know, we were thinking of having a subcommittee meeting and I had an opportunity to speak to Mr. Philip and Mrs. Cunningham. I suppose that is why I feel uncomfortable, in that I told them that as chairman I did not feel I should make any decisions, that it should be something that should be told to the committee. In that respect, I suppose I feel uncomfortable, in that the reasons that are not here were those that were expressed by Mr. Runciman. Having said that, I leave the floor to you, Mr. Kanter. I just felt, though, that I should say that.

Mr. Kanter: The history of the discussion of this subject, this clause, for whatever reason—far be it from me to impugn the motives of any member of this committee—has been marked by avoidance. For some reason, the other parties are not willing to address this particular clause.

There has been considerable discussion of this particular clause. I think all members of the committee received a copy of the ordering of the business. The normal order of business is to discuss these clauses in order; seriatim, I guess, would be the technical term. However, section 3, which is the drugstore amendment provision, was not discussed between section 2 and

section 4, which were discussed in October. There was a discussion of the drugstore clause in October, as I recall, and we agreed at Mrs. Cunningham's request to defer, to step down that section. Mrs. Cunningham at that time wanted to do further research with respect to that clause. "At that time" was in October.

Mr. Ballinger: Mr. Chairman, on a point of order: We can have this corrected. It was originally stood down because Mr. Runciman was not available. That is a direct quote from Hansard of Tuesday, November 29.

Mr. Chairman: That is interesting but it is not a point of order.

Mr. Ballinger: Quite frankly, what we now have is Mr. Runciman saying the exact same thing today about Mrs. Cunningham not being here. Tomorrow, is it going to be that Mr. Runciman is not going to be here and Mrs. Cunningham wants to stand it down again?

Mr. Chairman: That is interesting history, but it is not a point of order.

Mr. Ballinger: It is a fact and recorded in Hansard.

Mr. Runciman: That's a bunch of garbage.

Mr. Kanter: I find it interesting, Mr. Chairman, that you have jumped with very great alacrity on my use of the terms "delay," "obfuscation" and "stalling," yet Mr. Runciman has just suggested something was a piece of garbage.

Mr. Chairman: I did not hear that.

Mr. Kanter: I see. The point I am trying to make, which I think my colleague is confirming, is the fact that this is not the first time Mr. Runciman or representatives of his party have asked to have this specific matter about drugstores deferred.

I would direct all members of the committee to the clause-by-clause consideration which we have had prepared for us by the clerk: "Section 3: Mr. Kanter's motion to amend section 3 dealing with drugstores and Mrs. Cunningham's amendment to that motion stood down, Tuesday, November 29." I direct all members of the committee to recall at whose request that motion was stood down. It was not at the government's. Do you recall, Mr. Runciman, at whose request that was stood down on November 29? It was stood down by Mrs. Cunningham of your party, who wanted more time to consider this matter.

Consideration of this matter did not begin in the clause-by-clause hearings, which I might remind all members of the committee began on October 5, a considerable time ago. Consideration of this particular matter began with the committee hearings which commenced in August.

We travelled around this province, most of the members here present. Mr. Runciman, you did not have an opportunity to share in that particular experience, but Mrs. Cunningham, your colleague, did. She was there, and it is quite true, she asked many questions. She elicited much information from a number of groups. Shoppers Drug Mart was one. There were others. There were independent pharmacists. There were questions raised of grocery store retailers and many other retailers. The question of drugstores, of drugstore sizes, of drugstore stock, of what drugstores did, was debated at very great length. Mr. Chairman, I want to remind you of that fact.

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So we have the matter that was skipped over, slid over in October at Mrs. Cunningham's request and then was deferred on November 29 at Mrs. Cunningham's request. Now, on December 12 there is no Mrs. Cunningham.

It seems to me that this is typical, in a sense, of how other clauses and other aspects of this bill have been dealt with. I am certainly going to avoid dealing with the motives that other members may have had, but I would like all members of the committee to consider very carefully the impact this delay is having on the marketplace out there, the impact it is having particularly, I would say, on responsible merchants, on people who have said to us, and I suspect they have said it to the opposition members as well, "We want to obey the law."

But there are problems out there. There are people breaking the law with respect to dealing in cars, furs, stereos and that kind of thing. I brought all the ads the other day.

"Give us tougher penalties. The government should have the power to bring in injunctions. The government should have the power to use these ads as evidence. The government should have the power to fine those who coerce or compel those into violating the law." Do you recall that one, Mr. Runciman? Do you recall the idea that perhaps the crown should have the power to bring an action, to levy a fine or a penalty on people who coerce or compel others into breaking the Retail Business Holidays Act? Do you happen to recall that? That was a motion that you moved, which we accepted, because we agreed that enforcement should be stepped up.

What has happened? As a result of the stalling, for whatever reason, on the part of the opposition, the result is chaos out there in the marketplace. That chaos has been caused by the total and complete failure—and I am sure of my grounds—of the opposition to deal with this bill. We had an undertaking from the opposition initially that this bill and Bill 114 would take three days to consider. We have now sat here for 20-odd days. I forget the exact number. It was 16 sitting days some time ago.

The fact that disturbs me most greatly is that people are suffering. There is chaos and confusion in the marketplace. You might not want to take my word for the fact that people are suffering as a result of a lack of passage of this bill, but Ed Philip, our colleague from the party that is totally absent today, admitted that if this bill were passed, there would be stricter enforcement of the law this Christmas.

Les Kingdon, the executive director of the People for Sunday Association of Canada, was interviewed recently on CBC radio, on the Metro Morning show, on the issue of the increasing number of advertisements, threats and comments of retailers who might want to open on Sundays in December or on Boxing Day. He was asked by Joe Cote, "What will it take to resolve this issue once and for all?" Les Kingdon said: "Well, the government are presently considering Bill 113. They're down now to the last two or three clauses, and I would hope that they would have that settled by the end of next week and will then consider the only other bill, Bill 114, which is the labour legislation, and hopefully—and I say 'hopefully'—get back to the House and be passed before Christmas."

So you have an increasing chorus of people, responsible retailers, people who want to have this law enforced, who are crying out to have it

passed, who are crying out to have it considered in an orderly fashion by this committee. What response do we get from the opposition? They are not here. They do not give a damn. I think they are being totally irresponsible. I think this is unacceptable behaviour. I think the people of Ontario are suffering unnecessarily because of the behaviour of Mr. Runciman and his colleague. I am sorry in a sense because he is one of the four who is here today. The other three do not even care enough to appear before this committee. I think it is shameful.

Mr. Runciman: I think I should have the opportunity to respond to that kind of vitriol. That is what it is, certainly. I came here today because I was approached by my colleague, Mrs. Cunningham, with respect to her very valid concerns about this.

She met with a group today who expressed some views about the drugstore amendments. She felt, based on those submissions—and I believe there has been some documentation tabled with the committee related to this matter, as well, which has brought new information to light. She felt that it was quite appropriate to bring it to the attention of our caucus. She alerted Mr. Kanter to that concern, and I do not think that there was any effort on her part—and certainly there was not on mine when I attended the meeting today—to delay the proceedings with respect to talking about other areas of the bill.

I think Mr. Kanter addressed the matter himself. Mrs. Cunningham was the member of our caucus who now serves on this committee and who participated in the public hearings and has been very actively involved in this particular section of the bill. She has met numerous delegations and read through a significant number of depositions, and I think she has made a fair request. I have conveyed that fair request to this committee. As a result, Mr. Kanter, who was advised of this some time ago, has decided to use this opportunity—

Mr. Kanter: On a point of order, Mr. Chairman: I was advised by Mrs. Cunningham at the end of question period today, which was immediately before these hearings, that she would be asking for a deferral. Mrs. Cunningham and I have discussed this on numerous occasions and she gave me her word, which I generally take, at the end of the last meeting. It was discussed in open session. It was also discussed subsequent to open session that that would be discussed today. I would hardly call that giving me her word "some time ago." Mr. Chairman, it was not at the beginning of question period but at the end of question period today.

Mr. Runciman: That is not what Mrs. Cunningham advised me today. In any event, Mr. Kanter has seen fit to use this as some sort of an opportunity to get on his political soapbox and make a personal attack against me and against all of the opposition parties and indicate that we do not have enough interest in this matter to be present. I want to indicate to him, with his 93 colleagues, that we are talking about very few numbers in the opposition. All of us are performing at least triple duty, and each has significant responsibilities to carry out on behalf of his party and on behalf of the residents of this province. Therefore that kind of an attack is totally unwarranted. I think I would like to see you try to carry out the duties of one of the opposition critics for a couple of weeks, and we will see where you stand after that point in time.

I guess I am by myself here today and not in a position to do anything about it if, indeed, the government wants to use its very significant numbers in a very heavy-handed abuse of the democratic system. But I want to indicate that we are here representing some very valid concerns. We are trying to

participate in a meaningful way in these proceedings. I believe that—certainly speaking on behalf of my party—we have no apologies whatsoever to make about the way we have conducted ourselves throughout these deliberations.

Mr. Chiarelli: In view of the fact that there are people here today who are very interested in this particular issue, by prior agreement, this committee agreed to proceed today with clause-by-clause on section 3. I would like to give some consideration to the opposition and Mr. Runciman and place a motion with the chairman that the committee commence dealing with clause-by-clause on section 3 tomorrow afternoon, Tuesday, December 13, rather than today, so that Mrs. Cunningham and the Conservative caucus can properly deal with this issue. But I do not think it would be appropriate to wait more than another day, and I do not think, after everything that has been said by Mr. Kanter and everything that has gone on before this committee, the Conservative caucus should require more than one session to deal with this particular issue at this point.

Mr. Chairman: Do any other members wish to comment? Mr. Ballinger. We are going back in rotation. I do not know whether Mr. Ballinger—

Mr. Ballinger: I want to speak to what I consider this breakdown in the process, and it is certainly not to cast aspersions on Mr. Runciman because he is here, but I think, in all fairness, that the member—

Mr. Chairman: Are you speaking to the motion, Mr. Ballinger? There is a motion on the floor.

Mr. Ballinger: Is that properly on the floor?

Mr. Chairman: Yes, Mr. Chiarelli moved it. If you want to speak to the motion—

Mr. Ballinger: I wanted to duke it up a bit with Mr. Runciman. That is what I wanted to do.

Mr. Runciman: Another five minutes of abuse, verbal abuse.

Mr. Ballinger: No. I—

Mr. Runciman: I want to thank Mr. Chiarelli. I think that is a very fair motion. I do not know what Mrs. Cunningham's schedule is tomorrow, but I think it is an appropriate suggestion. It is going to be caucused. He is right that we have had the opportunity. I do not think there will be any excuses forthcoming. We will be prepared to deal with it. I think it is a fair suggestion and I appreciate him making it.

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Mr. Chairman: Any further members wish to speak to the motion that is presently on the floor?

Mr. Ballinger: I am getting into this one; I do not care. I am going to speak in support of the motion with some hesitation, Mr. Chairman, with the greatest respect. If you want to talk about abuse in this process, as a newly elected member of the government side, I think I have taken just about as much abuse from the opposition as any other member of this government.

They have talked on a continual basis about big, bad, insensitive, arrogant government, and here today is a classic example of us accommodating them. Two or three times we have accommodated them by standing down resolutions, because it is the old tit-for-tat game here: "Well, if we do this for that, then we can stretch another three days out of the process and make the government look stupid"—

Mr. Runciman: That is not hard to do.

Mr. Ballinger: You may think that, my friend, and you are entitled to that thought. I just do not happen to agree with you. Quite frankly, in this process, the process itself becomes stupid when you use the means of, "There are only a few of us and we have to stretch our resources over so many committees and everything else." You have used that all summer, Mr. Runciman, in this process.

Mr. Runciman: It happens to be the truth.

Mr. Ballinger: We have accommodated you.

Mr. Runciman: It is unusual for your party, but it happens to be the truth.

Mr. Chairman: Mr. Runciman, Mr. Ballinger has the floor.

Mr. Ballinger: We have accommodated you at every opportunity. As a government, we have bent over backwards. We have listened, we have taken a lot of the amendments, we have supported many of the amendments—in fact, some initiated by yourself—and you still have the audacity to sit there and dump all over us.

Mr. Runciman: Oh, come on.

Mr. Ballinger: You do, just as you did a few moments ago.

Mr. Runciman: Come on, now. The dumping has all originated on that side of the room. We have been very restrained and quite dignified.

Mr. Chairman: Order. Through the chair, Mr. Ballinger.

Mr. Ballinger: I am going to support the motion, but I certainly want my opinion on record about the accommodation I and every other member on this side have made—

Mr. Runciman: It is something for your next newsletter.

Mr. Ballinger: Not at all. I have read and listened to you all summer long about the big, bad government.

Mr. Chiarelli: On a point of order, Mr. Chairman: Can I withdraw my friendly motion?

Mr. Chairman: Are you withdrawing your motion?

Mr. Chiarelli: Not really.

Mr. Ballinger: I close by saying I am supporting it reluctantly.

Mr. Chairman: Do any further members wish to speak to the matter?

Those in favour?

It is unanimous.

Motion agreed to.

Mr. Chairman: The matter will be dealt with, then, by the terms of that motion as the first matter on tomorrow's agenda. I think that was the way it was put.

We are now back to the motion which was before us dealing with automobile dealers. Are there any further comments by members of the committee? We had significant discussion on this on the last occasion.

Section 4:

Mr. Runciman: I do have something, if you give me about one minute to find my notes. I shoved them aside, because I thought we were going to be dealing with another section. I think this is an important amendment, and I may touch briefly on some of the things that were discussed last week by myself and, I believe, Mr. Hampton. I believe Mr. Kanter's contribution at that time was simply to indicate that the government did not support the proposed amendment.

Mr. Kanter: Mr. Chiarelli spoke at some length in favour. Perhaps if you had been here, Mr. Runciman, you would have heard Mr. Chiarelli speak at some length to explain the rationale for the government position.

Mr. Runciman: My apology. In support of the amendment? Is that what you are indicating?

Mr. Kanter: No, he spoke in opposition, but he spoke at some length to give his reasons for taking the position he did.

Mr. Runciman: All right, fine. I accept that.

Mr. Kanter: I am sure the record would show it.

Mr. Runciman: All right. In any event, I was right in the sense that the government is going to oppose the amendment, despite the fact that this is the only organization to specifically request an exemption from the government. I think it has been clearly indicated that most operations in the province of Ontario are opposed to this. They are operating on a six-day week. Usually five evenings out of that week they are open for business until nine or 10 o'clock in the evening which, in the view of most reasonable people and certainly the operators of these businesses, provides an ample opportunity for consumers of the province.

I want to emphasize the concerns that have been expressed by individuals and firms in this line of business in respect to the experience in Vancouver. We have heard considerable testimony in respect to this legislation's having a domino effect. In effect, the testimony we have had before us that that is indeed what occurred in Vancouver bore out those concerns in a very real way, that once the competition opened down the street—in order to protect their market share—it compelled the Ford, Chrysler and Toyota dealers to do likewise and open their operations. If their marketplace is affected—and I

think we can all appreciate this—they are forced to open. They have to be competitive in what we know is a very competitive industry indeed.

The members of the organization were polled, and I think that some of the statistics that arose as a result of that poll are important and should be noted on the record as well—based on that—that 98 per cent of new franchise automobile dealers do not want to open on Sunday. They describe the reasoning behind that as being that they strongly believe in the common pause day and the quality of family life. They believe this legislation is going to place that in very serious jeopardy. They want their 40,000-plus employees across the province to have quality time with their spouses and children.

As I mentioned earlier, there is no other retail group to our knowledge—and certainly I do not think there has been any testimony to this committee in respect to any other group—that can state that 98 per cent of their members oppose Sunday shopping. The experience in Vancouver and the United States clearly proves that when Sunday openings in this industry are permitted, there is no significant increase in the volume of sales. What we are doing, indeed, is ensuring that in many instances we are literally compelling these employees to experience a very significant loss of positive value in respect to the quality time with spouses and children.

The automobile industry in Ontario—we want to put this on the record as well—unlike most other retailers, is governed by its own registrar and specific regulations directed towards the automobile industry. In spite of being the most-regulated retail industry in Ontario, the auto dealers and their provincial associations have an excellent working relationship with various ministries that govern them, and they work together harmoniously to refine and introduce legislation that benefits consumers. A good example of that is the Motor Vehicle Repair Act, a work in which the auto dealers were very much involved in terms of the development of that piece of legislation.

This kind of exemption is not unique; I read into the record last week a number of jurisdictions that have legislation providing the exemption that my amendment suggests. But I would like to give you an example of the kinds of legislation in some of the US jurisdictions. There is the Colorado Motor Vehicle Industry Licence Law and Regulations and specifically 12-6-302, Sunday Closings. A couple of elements of this I think would be of interest to members of the committee when we are talking about this question and also when we are talking about the area of penalties, which we have discussed at length.

1630

On Sunday closing: "No person, firm or corporation, whether owner, proprietor, agent or employee, shall keep open, operate or assist in keeping open or operating any place or premises or residence whether open or closed for the purpose of selling, bartering or exchanging or offering for sale, barter or exchange any motor vehicle or motor vehicles, whether new, used or second-hand, on the first day of the week, commonly called Sunday. This part 3 shall not apply to the opening of establishment or place of business on the said first day of the week for other purposes such as the sale of petroleum products, tires or automobile accessories or for the purpose of operating and conducting a motor vehicle repair shop or for the purpose of supplying such services as towing or wrecking."

Another element of this, to be very brief, in respect to penalties, which I think is of interest: "Any person, firm, partnership or corporation who violates any of the provisions of this part 3 is guilty of a misdemeanour

and upon conviction thereof shall be punished by a fine of not less than \$75 nor more than \$1,000, or by imprisonment in the county jail for not more than six months, or the court in its discretion may suspend or revoke the Colorado motor vehicle dealer's licence issued under the provisions of part 1 of this article or by such fine and imprisonment and suspension or revocation."

I think that was an interesting approach to it. I have been advised that many of the pieces of legislation in a number of jurisdictions in the United States are comparable in respect to the wording of the legislation.

Again, I am not going to go on at length in respect to this particular amendment. I think it is eminently fair. It is a very reasonable request on the part of an organization that is the only one appearing before this committee during the course of its deliberations to request a specific exemption. Again, it is not unique. The experience in jurisdictions where they have gone the other way has been exactly what this organization has predicted: that businesses are forced, through a domino effect and the fact that they are going to have to make every effort to maintain their share of market, to find themselves opening on Sundays.

We have talked about the other complications in respect to government offices: that the consumers' ability to determine whether the purchase is appropriate in terms of searching for liens, etc. is going to have to wait that extra day simply because of the fact that government offices are not, as we understand it, going to be open on Sundays to accommodate businesses that will now find themselves forced to open on that pause day.

It is a reasonable request and I would ask the government members to reconsider the position they have taken and give this matter their full support.

Mr. Sola: I would like to put on the record an advertisement I have in front of me from the Mississauga News of Friday, December 9. It is from Ontario's number one Hyundai dealer, Hyundai of Mississauga, concerning a nine-hour Sunday sellout sale. It says "Closed Saturday to prepare for sale on Sunday," and it lists price reductions of anywhere from \$1,100 to \$1,700. I would like to point out that this is in the Erin Mills Auto Centre, where we have, I think, at least a dozen dealerships. This is under the present legislation, which Mr. Runciman's party is so wont to defend at this time.

I would just like to point out that this ad seems to put at rest a lot of the arguments that the honourable member has put forward. I would like to point out that under the proposed legislation, this ad would be sufficient to close this dealership down. Under the present legislation, there is not too much that can be done about it. You can issue warrants. You can arrest people there, but as we have found out with the fur dealership or the fur stores and other stores, that people are really abusing the present legislation, especially around Christmastime.

I would just like to point out that if we were to follow some of the arguments that were presented to this committee about Sunday openings being up to 15 per cent more expensive, about the very fact that government offices are not open, I would suggest that under the present legislation, we have no protection against the abuse or against these same arguments that the honourable member was using. I think that if we want protection, we want the new legislation.

I do not want to repeat the arguments that Mr. Chiarelli used last week,

but I think he pointed out that when the dealerships want to, in various parts of the province, they can come to an agreement and be closed, not just Sundays, but Saturdays and even Friday nights during the summer. I am opposed to the amendment.

Mr. Runciman: If I could respond briefly to that, I think that contrary to what Mr. Sola is saying, I would suggest that the nub of the problem here is in terms of the concerns of the dealers right across this province in respect to having a few renegades, if I can use that term, like the firm that you were talking about in the advertisement there now. Obviously, you talk about the current legislation. The government has the ability to take action under the current legislation. That went through the courts. We dealt with that in terms of the furrier in Toronto.

The government, for whatever reason—Mr. Kanter went on at length about this earlier—was having a great many problems occurring right across the province, especially in some of the heavily urbanized areas right now with businesses opening. They perceive that there is a vacuum there. The government, because of this legislation, really does not have the will to carry out enforcement. That is my interpretation anyway, Mr. Kanter.

Mr. Kanter: Local police forces can enforce it, Bob, you know that.

Mr. Runciman: I am assuming that even the local police forces are reluctant because of the fact that we are dealing with this particular legislation which is in many eyes seen to be much more permissive in terms of encouraging open Sunday shopping. That is our view in any regard. I think that when we are talking about firms like this, if indeed we allow the municipal option and the municipality opts for Sunday shopping, you may indeed have the majority of dealerships in that particular municipality preferring to remain closed.

You are going to have that kind of a renegade operator who is going to go ahead. In effect, you are going to experience the domino impact where all of the other dealers in that community are going to be obligated to open as well, in order to survive and maintain their share of the market. I do not think that was an appropriate example in shooting down my position. I think, if you properly interpret it, it was very much supportive of my position.

Mr. Sola: I would like to respond to that briefly. I think Mr. Runciman just pointed out that under the present legislation you can have renegades without municipal bylaws. Under the proposed legislation, the only way you could have a renegade is to have municipal bylaws which are also approved by the regions. It would be much more difficult.

I would like to point out that some people have pointed out that in order to lobby to get these municipal bylaws, it is not just a simple matter of lobbying and spending time. It takes time and money and effort. I have heard from some of the people who are interested in maintaining Sundays open about how expensive it will be to lobby to get their present situation extended under the new law. I do not think that the proposed law will ease things at all, but it will make things much more difficult for people who want to disobey the law. It will make things much easier to police, because a simple advertisement like this will be sufficient evidence.

Mr. Runciman: Well, a simple amendment will certainly remove the concern once and for all.

Mr. Chairman: Thank you. The amendment is before you. Ready for a vote?

Mr. Runciman: Recorded vote.

Mr. Chairman: All right. A recorded vote has been called for.

The committee divided on Mr. Runciman's motion which was negatived on the following vote:

Ayes

Hampton, Runciman.

Nays

Chiarelli, Collins, Kanter, Sola.

Ayes 2; nays 4.

Mr. Chairman: The next matter is the sunset amendment by Mr. Philip. Before we start, this was—

Mr. Kanter: Can I just—

Mr. Chairman: Yes.

Mr. Kanter: Obviously that is on the horizon. Could I just perhaps remind you and seek your views on another clause that is still before us. I understand that the Conservatives—and I do not recall whether it was Mr. Runciman or someone else—moved an amendment to, I believe it was subsection 5(1), to delete "by reason of the religion of the owner of the retail business." I believe that is before this committee. I believe it was before the committee prior in time to the more recent amendment. I believe it is prior in order. I was wondering if it might not be appropriate to deal with it at this time rather than the later amendments on this setting up of the committee.

Mr. Chairman: I had not seen it in the package, but I gather we have it.

Clerk of the Committee: We do have it.

Mr. Chairman: Okay, the clerk has it. You are quite correct. That would be next in order. It was actually Mrs. Cunningham's. I can put Mr. Runciman's name in there as moving it.

Mr. Runciman: As long as you do not ask me to speak to it.

Section 5:

Mr. Chairman: Now we all have, or are pretty close to having, a copy of an amendment.

Mr. Runciman moves, on behalf of Mrs. Cunningham, that subsection 5(1) of the bill be amended by deleting "by reason of the religion of the owner of the retail business" and be further amended by deleting subsections 5(2), 5(3), 5(4), 5(5) and 5(6).

Mr. Runciman: Perhaps we could hear the government's views on this while I rifle through all these various papers that I have.

Mr. Chairman: Do you wish to go first Mr. Kanter? Or, for that matter, is there any other member who wishes to speak to it?

Mr. Kanter: I think it would be more appropriate to have the opposition move the motion. If Mr. Runciman requires a very brief adjournment to find some notes on that, that would be—

Mr. Chairman: It is not his motion.

Clerk of the Committee: Yes it is.

Mr. Chairman: Just a second, I am sorry. It was your motion, I am told by the clerk.

Clerk of the Committee: It is now.

Mr. Runciman: It is now.

Mr. Chairman: It is now. But I think if you want to do that and it is a matter of five minutes it might be more appropriate.

Mr. Kanter: I am just suggesting to him that if Mr. Runciman would like five minutes to find some notes or confer with someone, that would be quite acceptable.

Mr. Runciman: It would probably be helpful if I had ten minutes to call Mrs. Cunningham or one member of her staff.

Mr. Chairman: Recognizing that 10 minutes always stretches into 15, we will adjourn until 5 p.m.

The committee recessed at 4:44 p.m.

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Mr. Chairman: All right, we will resume discussion. Mr. Runciman, you have the motion which we read prior to our adjournment. You are up.

Mr. Runciman: I had some difficulty in trying to determine a lot of the rationale behind this. Probably Mr. Kanter, from a comment he made out in the hall, is more familiar with the arguments, both pro and con, with respect to this than I am, Mr. Chairman.

Mr. Kanter: I didn't tell you what those arguments were.

Mr. Runciman: Apparently, it rises out of a presentation that the Canadian Jewish Congress made to the committee during the summer deliberations on its concerns about the Sabbatarian exemption. I think it has been mentioned on a number of occasions about some Supreme Court decisions. I think there is a strong feeling, and I guess Mr. Kanter may want to comment on this one element of it in respect to the fact that this particular section of the bill and the wording as it currently stands is probably going to be open to challenge.

Perhaps he has some legal advice with respect to that, as to whether

they feel it could sustain a challenge. The comments that I have heard, during our brief break, from a couple of folks actually, Mr. Chairman, indicated that based on—I think it was the Big M decision and the Lord's Prayer decision—there is a strong feeling that this would not stand up to scrutiny.

I think perhaps we could deal with that one particular aspect at the outset and either hear legislative council's opinion or Mr. Kanter's opinion.

Mr. Chairman: I think we should probably hear Mr. Spring on that. Do you feel comfortable answering Mr. Runciman's question, Mr. Spring?

Mr. Spring: Yes.

Mr. Chairman: Although Mr. Kanter is a lawyer, I do not think it is—

Mr. Runciman: I was not doing it on the basis of Mr. Kanter's training. I was doing it on the basis that I had assumed that—in his capacity—the government had taken a look at that, sir.

Mr. Kanter: I will be glad to comment on it, but perhaps if Mr. Spring has some preliminary comments, and I certainly will have some comments as well.

Mr. Chairman: We will keep Mr. Spring out of the arena of politics, though. When it gets to that stage I will—

Mr. Spring: I am in just a little difficulty, Mr. Chairman. I was doing my best to listen to Mr. Runciman, but his voice was quite low and I did not catch the precise nature of his question. I apologize.

Mr. Chairman: He was concerned, Mr. Spring, that in light of the present situation with the elimination of the Lord's Prayer that the particular sections of the bill as presently proposed—and correct me if I am wrong—might be subject to a successful application under the charter, and I guess what he was asking was whether any consideration had been given to that under those circumstances.

Mr. Spring: The view of the Attorney General's office, Mr. Chairman, is that the section, as currently constituted, provides probably the best defence against a charter attack in light of the considerations that were given to the protection of persons who celebrate their Sabbath on a day other than Sunday, the considerations that were given in the Supreme Court of Canada decision in *Edwards Books*.

The view of the Attorney General's office is that to address the question of religion head-on, as it were, is the best defence against an anticipated attack, if you will. To my knowledge that is why the consideration of religion has been included here.

As you may recall, Mr. Chairman, the Supreme Court of Canada did say, one or more judges, including the chief judge, said that the current Saturday closing/Sunday opening option in the current act went far to establishing the constitutional validity of the act as it currently exists.

From a legal point of view, I would argue that this is a strengthening, if you will, of that position, in so far as it permits not just Saturday observers, but observers of other days of the week as Sabbath, to carry on their religious practices on another day and to even up the commercial advantage, if you will, by opening on Sunday.

If I have not addressed Mr. Runciman's question directly I apologize. I will try to do so.

Mr. Chairman: Does anybody have—Mr. Kanter?

Mr. Kanter: Mr. Chairman, I will try to deal with the policy question. Mr. Runciman has raised a valid concern. It has been the position of this government all along to try to balance two competing concerns, if you like. One of them is basically a Sunday closing law. The other one is the right of an individual to pursue his day of religious observance on a day other than Sunday and to be open commercially on the Sunday.

We have been trying to balance those two valid interests. I think there is a general consensus that it is necessary to have a Sabbatarian exemption in the law in order to meet the religious concerns of those who do not worship on Sunday. The question then becomes what the form of that Sabbatarian exemption should be. In the current form, I think there is some agreement that it is too restrictive. There are problems with the current Sabbatarian exemption. It does not extend protection to merchants who worship on days other than Saturday or Sunday, and it limits exemptions to Saturday worshippers, to smaller stores and fewer staff.

I guess we start with the premise that we need a Sabbatarian exemption and it should be broader in some ways than the current Sabbatarian exemption to allow for people who do not worship on Sunday or Saturday. We then get into the question of how broad it should be, and the concern we have with the position Mr. Runciman is taking through this motion is that it would then become too broad. It would then allow anyone to close on any day for any reason without regard to religious belief, and people could close for quite blatantly commercial reasons. More people would close on Monday or Tuesday if they were the less busy commercial days. Our concern is that it would be tilted, if you will, or unbalanced towards commercialism rather than religious belief.

I would add, and I am very impressed with Mr. Spring's ability to recollect the decisions of cases without necessarily—

Mr. Spring: Don't press me further.

Mr. Kanter: —having them in front of him. I guess in anticipation that this clause was going to be discussed today, I do have a report of the Edwards Books and various other parties' case before me. There is a discussion, I think, of the validity of having a judicial inquiry into religious beliefs in some cases, providing that it furthers religious views and furthers the protection of religious views, particularly minority religious views.

I do not normally read sections of cases, but I think it would be perhaps worth while putting this into the record because I think it sums up both our policy rationale and also the fact that we expect this could stand a challenge. Mr. Runciman essentially raised two points on the legality: one, that it would be open to challenge; and, two, could it sustain a challenge?

I certainly cannot deny that it would be open for challenge—under the charter, virtually any law is open to challenge—but we believe it could sustain a challenge largely for the reasons expressed in the Supreme Court of Canada decision. I am just looking for Mr. Justice Dickson, the Chief Justice of Canada, at page 49 in this report. I apologize if I sound a bit like a law

student. I have not had this opportunity for some time, but I think I can say it in two paragraphs. This is the Chief Justice at page 49:

"I do not mean to suggest that a judicial inquiry into the sincerity of religious beliefs is unconstitutional. To so hold would mean that the courts could never grant constitutional exemptions from legislation which impinged on the free exercise of religious beliefs.

"Judicial inquiries into religious beliefs are largely unavoidable if the constitutional freedoms guaranteed by section 2a are to be asserted before the courts. We must live with the reality that such an inquiry is necessary in order for the same values to be given effect by the judicial system. Inquiries which are genuinely designed as a means of giving effect to religious freedoms will not therefore generally be unconstitutional. There will, however, be occasions when a substantial measure of religious freedom can be achieved without mandating a state-conducted inquiry into personal religious convictions and the legislatures ought to be encouraged to do so if a fair balance is struck."

I will certainly make this available to all members of the committee.

I should perhaps note that there has been some concern expressed from the other side. There was concern expressed, and I think very genuine and legitimate concern particularly on the part of Mr. Philip of the NDP, who was suggesting that this religious exemption was perhaps too broad. I do not want to put words in Mr. Philip's mouth, but my recollection was that he suggested people could abuse this provision in various ways, that it could be relied on in ways that are unintended.

Again, I can only repeat the intent of the government to try to drive a careful middle road, so that those people who genuinely have religious views could close on other days and be open on Sundays. In the event that the police chose to enforce it, or that there were complaints, there could be an inquiry as to whether there was a religious basis for their concern. If the matter was in court, in most cases we would expect that would be the end of it, but there would need to be a religious rationale, rather than merely a commercial rationale, for their being open.

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It is an attempt to be fair and balanced. We realize there were some inquiries both from people who felt it was too broad and from people who felt it would be too narrow. We feel it is a reasonable middle road. We feel that it is a balanced approach and that it could sustain a challenge on the basis of the opinion that I have just read from the Edwards Bookstore case.

Mr. Runciman: When we talk about Mr. Spring's powers of recollection—and I do not know if he is familiar with the case, but if he is, apparently it is relevant to this section of the bill—that was the Big M case. I wonder if you see an analogy there, or if you could comment on that, because I am certainly not familiar with it, but I know it was drawn to my attention prior to resuming deliberations.

Mr. Spring: As I recall, and I will defer to legislative counsel on this, Mr. Chairman, Big M was the case that struck down the Lord's Day Act as unconstitutional in the Supreme Court of Canada. It did so on the basis, as I recall, that the act infringed upon freedom of religion, which is guaranteed under section 2 of the charter—and I stand to be corrected here—and that

nothing in section 1 of the charter saved it. Beyond that, Mr. Runciman, I am not prepared to offer an opinion because it has been some time since I read Big M; but Big M basically blew out, if you will, the constitutionality of the Lord's Day Act. I do not see the analogy between the effect of that decision and any purported attack on this particular section, as currently proposed, before the committee.

This legislation is not designed to be Sunday observance legislation, which in fact Big M was. I think therein lies the vital distinction between the Retail Business Holidays Act, with the proposed amendments, on the one hand, and the Lord's Day Act, which was basically characterized as legislation to preserve the sanctity of Sunday and, as such, was found to violate the freedom of religion of other-than-Sunday observers and no saving grace was found in it.

Mr. Chairman: You may wish us to ask legislative counsel. That is my recollection of Big M too.

Mr. Revell: I am just reading a brief summary of it and I think that Mr. Spring has said it all, without repeating the significance of the Big M case.

Mr. Runciman: We will accept that. If legislative counsel sees something different, he can—

Mr. Revell: If you will just give me a minute. I will continue to read it.

Mr. Runciman: All right. There is another area of this that I would like to hear Mr. Spring's views on, while he is at the witness table, and that is subsection 5(2):

"For the purpose of subsection (1), 'religion of the owner' means,...

"(c) in the case of a corporation, the religion named in the bylaws of the corporation."

I am just wondering—and it struck me as unusual at first blush really—how many corporations would put religion in their bylaws? Would that not be rather an unusual exercise, or is that common practice? Why is it being addressed in that manner? It just seemed rather unusual.

Mr. Kanter: Are you asking that question of Mr. Spring or myself? I am not sure who is more eager to answer it.

Mr. Runciman: I guess Mr. Spring. I am not sure. Whoever feels comfortable—

Mr. Ballinger: Why don't you ask a nonlawyer? You will probably get a straight answer.

Mr. Kanter: He does not have any choices here. Do you want to comment, David?

Mr. Ballinger: Being a lawyer—

Mr. Spring: I would certainly defer to you, Mr. Kanter. From a legal point of view, it was addressed in that manner simply so that businesses that

took the form of corporations would not be discriminated against, so that they could enjoy the same privileges as, shall we say, sole proprietorships, partnerships or businesses that existed in some other manner. It was not desired that corporations be discriminated against. They had to find some way to bring them within the ambit, if you will, of subsection 5(1).

Mr. Runciman: To do that, any corporation that wishes to involve itself in this kind of operation would have to amend its corporate bylaws as well, to reflect the religions of the owners. Is that what you are suggesting?

Mr. Spring: If it wishes to take advantage of the provisions of subsection 5(1), yes, I believe they will have to do that if they have not done so already.

Mr. Chiarelli: Are there legal objections that you can think of in requiring a company, a partnership or an individual for public purposes or commercial purposes to declare their religion?

Mr. Spring: I am not aware of any.

Mr. Runciman: It seems passing strange—

Mr. Kanter: Perhaps I could ask Mr. Spring a question. Is there not a similar provision under assessment legislation where corporations may choose to declare their support for either the separate school system or the public school system, where a corporation may be asked to state its religion for that particular purpose?

Mr. Spring: There may be, but I have to defer to legislative counsel on this matter.

Mr. Runciman: I do not think so.

Mr. Spring: I do not know.

Mr. Kanter: Perhaps we should just leave that as an open question. It was my impression that—under assessment legislation I know that the religious preference of individual voters in a municipality is listed. I believe that there was a provision whereby corporations could also indicate their support.

Mr. Runciman: I am not sure that religious preference is indicated. In terms of the system that you wish to support through your taxes, it is indicated. That is not necessarily an indicator of your religious beliefs as far as I am concerned. Someone could be a Protestant and be supporting the separate school system and sending their children to the separate system which happens to—

Mr. Kanter: On the narrower point you raise with respect to corporate preference, I thought there was something in the Assessment Act, but I am not sure, and we will try to confirm it. I just do not know the answer beyond raising the question at this point.

Mr. Chairman: Mr. Kanter, I think that was a big problem with Bell Canada, or one of the major corporations in the separate school issue.

Mr. Revell: We are checking on the situation on that.

Mr. Chairman: Could we move beyond the legalese?

Mr. Runciman: I think most of the concerns in respect to this deal with legalese, I would think. I know that Mr. Kanter mentioned other religions, and I know that we discussed the possibility of another amendment to this particular section which perhaps may not be appropriate, based on what Mr. Kanter said.

As I said earlier, I have not given a great deal of thought to this particular section. As we talk about religions other than those that look at Saturday or Sunday as their day of rest, I would be interested in knowing how significant that is. We are talking about the Muslim religion, which has other days of rest in terms of businesses.

Mr. Kanter: They are predominantly Muslim and Hindu as I understand it. I know just from very general briefings and information that I have read or heard from people like the Minister of Citizenship (Mr. Phillips) that there are significant and quite rapidly growing groups of people who do observe their Sabbath on days other than Saturday or Sunday.

I do not have the statistics at my fingertips. We could certainly obtain them for you. I understand that the growth in these groups has been quite significant as of recent years, and is projected to continue at a fairly significant rate.

Mr. Runciman: Apparently there were no witnesses appearing before the committee during its public hearing exercise to express concerns about any particular restrictions that might impact on their operations, because of their particular religious beliefs.

Mr. Kanter: I am not quite sure I understand that question.

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Mr. Runciman: Well, for example, if indeed we wanted to pursue this with another amendment which would say "always closed to the public throughout Saturday," and cut it off at that stage, the concern that you expressed about closing on a Monday or a Tuesday or a Wednesday could be addressed through another amendment that says simply "always closed throughout Saturday." Then, of course, it raises up the concern about the other religious groups. Those religious groups have not approached this committee in respect to Sunday operations so, I am just wondering how much of a consideration that could be.

Mr. Chairman: Mr. Runciman has the floor and I think he is responding to Mr. Kanter. If Mr. Kanter wants to relinquish the floor to you—Mr. Kanter?

Mr. Kanter: I am not sure if it was a question or a comment. I would say that for example, the Canadian Jewish Congress in its brief, took a fair and balanced approach. On the one hand it did express some concerns as did at least one other group—I believe it was the Mormon church. Another group did express some concerns about an inquiry into religious views. At the same time the Canadian Jewish Congress and other groups, the Seventh-Day Adventist Church of Canada, for example, expressed some concerns about the limitations on the current Sabbatarian exemption limitations in terms of size and staff.

I may be repeating myself here. I think there is a general consensus

that there should be a Sabbatarian exemption. I think there seemed to be a general consensus based on the groups that appeared before us that people who choose to close their stores on Saturday, Friday or other days should be able to operate on Sunday without restriction. There did not seem to be any difficulty with that and, as I recall, many mainstream denominations supported our revised Sabbatarian exemption.

I think it is fair to say that, of the groups which came before us and commented on this section—and certainly by no means everyone did comment on the Sabbatarian exemption—the generality were in support; not without comment and not without criticism on a couple of occasions. But it is fair to say that, on balance, it generally received support from the deputants who appeared before us.

Mr. Chairman: Okay.

Mr. Chiarelli: I just was not sure what point Mr. Runciman was making and I am going to ask him through you, if I may Mr. Chairman, whether he was saying that a retail business establishment could remain open on a Sunday or every Sunday, if it chose to close every Saturday—and totally leave out the question of religion. Is that the point you were making?

Mr. Runciman: Well, that was certainly one of the proposals that was made to me and I cannot indicate that I would personally be supportive of it at this stage either. I simply wanted to float it, if you will, in terms of the implications it had on other religious groups, etc. It was just a suggestion that was made to me that could perhaps address it in another manner other than the amendment that Mrs. Cunningham put forward. It is trying to address the same sort of concern.

Mr. Chiarelli: On the same point, I would like to ask Mr. Spring a question. If for example, subsection 5(1) were to read, "an establishment could stay open on a Sunday if the retail business is always closed to the public on Saturday," would that be open to challenge?

Mr. Spring: In my opinion it would be more open to challenge than it would be under the proposed amendment although, I must say to you, Mr. Chairman, it was that type of exemption, without the mention of religion, that was held to be supportive of the constitutionality of the current legislation. In my opinion the ambit of this particular clause, in so far as it addresses all other days of religious practice other than Sunday, and in so far as it addresses head-on the question of religion, affords an excellent defence, if you will, to an attack on constitutional considerations.

I do not want to sound political when I say this. It is the best that we as civil servants and as members of the Attorney General's office can come up with in order to deflect these constitutional attacks, or the ones we might anticipate.

Mr. Chairman: I do not think that is political, Mr. Spring. I think the charter is going to be a course that will have to be run for time immemorial. I think you are doing exactly what you are required to do as a civil servant.

Mr. Hampton: I have a couple of questions I would like to ask Mr. Spring about the existing section 5. I want to put myself in the position of a municipal police officer or someone who is charged with enforcing section 5 before the court.

Subsection 5(2) says:

"For the purpose of subsection (1), 'religion of the owner' means,

"(a) in the case of a sole proprietorship, the religion of the sole proprietor;

"(b) in the case of a partnership, the religion named in a written agreement between the partners which is the religion of one of the partners;

"(c) in the case of a corporation, the religion named in the bylaws of the corporation."

Where in the act does it require either a corporation or a partnership to name its religion?

Mr. Spring: There is nowhere that it is required. The naming of the religion will provide a defence to a charge under the legislation.

Mr. Hampton: Well, let me play devil's advocate.

Mr. Ballinger: Oh, for the first time this summer.

Mr. Hampton: You have to excuse Mr. Ballinger. He just woke up.

If I bring a charge that someone is remaining open and in defence they simply say, "It's our religion," nowhere does it say in the act that they must state their religion in their partnership agreement or in their bylaws. They simply say, "Well, that's our religion." The crown would then have to prove somehow that it is not their religion?

Mr. Spring: No. If I can suggest a scenario, if the police were to go into a store which would not, shall we say, normally be open on Sunday—

Mr. Hampton: How do you determine that?

Mr. Spring: A shoe store. Under this act there is no exemption for shoe stores opening on Sunday.

Mr. Hampton: Okay, I see what you mean by normal now.

Mr. Spring: There is a complaint, say, from another shoe store dealer that this particular shoe store is opening on Sunday. The shoe store proprietor tells the police officer or other enforcement officer who is making the inquiry, "Well, I was closed on Saturday and I was closed on Saturday so as to allow myself to practice my religion." The police officer might then say, "Yes sir, and may I ask what that was?" An appropriate answer might be given, and no charge would be laid.

It is not incumbent on those persons named in clause 5(2)(a) to produce the piece of paper which says, "I am sole proprietor and I practice my religion on Saturday." It may very well be in the enforcement process that the police officer may find it necessary to ask the question. I believe that type of inquiry is countenanced by the law as it currently exists.

In the case of a partnership, the religion, in order to obtain the advantage, if you will, of subsection 5(1) will have to be named in a written agreement between the partners which is the religion of one of the partners. A

failure to produce that agreement might conceivably result in a charge being laid. It may be that the police would find it incumbent upon themselves to make further inquiries or to allow the proprietor to—

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Mr. Hampton: Can I stop you right there? That is really the scenario I am interested in. The police walk into a partnership that is open on Sunday, which is not normally open on Sunday, not granted an exemption under the act, and someone in the store says, "We are open on Sunday and we were closed on Saturday or we are closed on Monday, to do with our religion." The police then embark on an inquiry as to what kind of business this is, a sole proprietorship, a partnership, etc. They say, "So you're a partnership." I do not see clause 5(2)(b) as requiring a partnership to carry through with a positive act of naming their religion in the partnership agreement. How do you read clause 5(2)(b) that way?

Mr. Spring: I read it that way simply because in order to erect a defence in a court of law, the partnership has an absolute defence if it can show it has a religion as defined in clause 5(2)(b) that permitted it to carry on business on a Sunday by closing on that other day.

I am not saying things would always go that far. You realize, of course, we are speculating. The police are under no obligation to make the partnership produce its document. They may very well be satisfied with a verbal response. In most cases, I suspect they would be, but once again, as I say, I am speculating here.

The fact is that the document as set out in clause 5(2)(b) would be the foundation of a defence to a charge of opening illegally, once that document is produced and indicates that the religion of the partnership is such as to afford it the right to close on another day and open on Sunday.

Mr. Hampton: I guess I have problems with the wording of subsection 5(2). If there is no written document, if one of the people who says, "I'm a partner," says: "My religion is thus and thus. We close on this day and we open on Sundays," where does that leave the police in terms of knowledge, proof?

Mr. Spring: The onus, in my belief, will be on the person espousing the religion to show that is a bona fide exemption to the requirement expressed otherwise that the store close on Sunday. It is an exemption created. The crown is not required to negative exemptions. It is an exemption that is created from the general rule that stores must close on Sunday. It is an exemption that is created for the purpose of religion. It does cast some burden upon the person at some particular stage of the proceeding to espouse the religion in the manner set out in the legislation. Where it is a partnership, the absence of a written agreement may very well take away the defence that is otherwise available.

Mr. Chairman: Could I make an inquiry?

Mr. Hampton: Yes.

Mr. Chairman: You made the comment that the crown need never prove an exemption or a defence or proviso. If someone were charged under subsection 5(1), because they were a shoe store that was not normally open on a Sunday, the police could lay the charge and it would then be up to the shoe store to

show two things: that they are always closed to the public on that specific day and that they close on that specific day because that is the day they claim to exercise their religious belief. Is that right? The onus would fall on them to establish that as a defence?

Mr. Spring: I believe so, yes.

Mr. Chairman: Failure to establish either one of those facts would be sufficient to render a conviction against the offending business?

Mr. Spring: You put a lot on the plate, but yes, I believe that is correct.

Mr. Hampton: I guess where I have a problem is that if the partnership or the corporation says, "This is our religion," I do not see clause 5(2)(b) or clause 5(2)(c), the way they are written now, requiring either the partnership or the corporation to produce something which proves that.

Mr. Chairman: I think what Mr. Spring was saying is that if they were charged, because obviously they are a business that should not be open on Sunday, they would have to, in their defence, prove on a balance of probabilities that they were, first, closed all the time on that day and that—

Mr. Hampton: Again, once they offer that in some sort of—

Mr. Chairman: The crown does not prove that; the defendant has to prove it.

Mr. Hampton: But if I am one of the store partners and I say, "We're closed every Saturday"—

Mr. Chairman: The same way they would prove every other negative, by calling evidence to show that they were open one Saturday during—

Mr. Hampton: I am just trying to expand or explore the possibilities of difficulties of proof here. The second part is that they say, "This is our religion." The way the act seems to be worded, there seems to be an attempt to say, "If you're claiming it as a partnership, you have to produce a written agreement." I do not think that language is strong enough: "the religion named in a written agreement between the partners which is the religion of one of the partners." Does that require a partnership, as a positive act, to name their religion in the partnership?

Mr. Spring: If they wish to take advantage of the provisions of subsection 5(1), that is the method of proof prescribed in the legislation, yes. Similarly, with clause 5(2)(c), my view is that if the religion of the corporation as espoused by the corporation is not espoused in the bylaws of the corporation, then the religion of the owner is not a defence to a charge that they closed on a day other than Sunday and opened on Sunday, because that is the definition of religion of the owner.

Subsection 5(1) does say that you must be always closed to the public throughout another day of the week by reason of the religion of the owner. The phrase "religion of the owner" is then defined, and in clause 5(2)(b) and clause 5(2)(c) it has to be a written definition or a written prescription of religion, if you will, since we are talking here basically of artificial persons.

Mr. Runciman: Just a clarification on that written agreement. It is very vague. Is that a recognized legal partnership agreement? Is that what we are talking about?

Mr. Spring: Not necessarily. It can be any written agreement between the partners. It would not necessarily have to be included in the partnership agreement, of which there may be various forms and adjuncts. It could be a quite separate agreement.

Mr. Runciman: So this would not be filed with anyone? This could simply be drafted on the spot, if you will. That is a possibility.

Mr. Spring: That is a possibility.

Mr. Chairman: It would also be perjury, though. It would be perjury for the person to put that into evidence under oath.

Mr. Spring: I might just add, if I may, that we cannot forget the other requirement, that the retail business is always closed to the public throughout another day of the week. I just want to suggest to the committee that perhaps an on-the-spot declaration or definition may not meet that other test as well. I just leave that to the committee for its consideration.

Mr. Runciman: A point was brought forward, and I am not sure if Mr. Spring made reference to it. We talked about the Lord's Day Act and related that to the Big M Drug Mart case. Is there any relationship to the recent court case in respect to the Lord's prayer? Is there any analogy there?

Mr. Spring: I am simply not familiar enough with that case to comment. It may well be that there are other lawyers around this table in various capacities who may wish to do so, but I would hesitate to venture an opinion as to whether there are analogies to be drawn from that case.

Interjections.

Mr. Spring: I can undertake to inform myself, but I cannot volunteer an answer for the benefit of the committee at this time.

Mr. Chairman: That is what the Supreme Court of Canada gets paid for, I think.

Mr. Runciman: Does the committee counsel have any views on this that he wishes to offer?

Mr. Revell: Simply put, most of these cases deal with an attempt or perceived attempt by the state to prevent or to interfere with religious observance. I think that can be contrasted to the proposed section 5 which purports to recognize that people do have different religious observances in our society. I think that is the fundamental distinction between the two types of cases, including the recent Lord's Day case.

Mr. Runciman: I gather there is, Mr. Chairman, and both Mr. Spring and the committee counsel expressed a degree of uncertainty. Perhaps you were not doing so but I think that you may wish to as well, upon reflection.

Mr. Chairman: One of the rules in the rule book is that the chairman should never give legal opinions. From time to time, I fall prey to saying something.

Mr. Runciman: I guess I would simply make a request that hopefully legal counsel and perhaps Mr. Spring as well will have an opportunity between now and tomorrow to perhaps take a look at that and see if there is any impact in respect of what is being proposed here and report back to us tomorrow. They have not had the opportunity to do that. It may indeed, as you suspect and as both counsels suspect, not have any relevance in respect to this particular section of the bill, but I think it would be wise if they had the opportunity to review it.

Mr. Chairman: Do the members have any objection to that? It being almost six o'clock, and in light of that request, unless there is something further—

Mr. Kanter: I am not going to object to that, but just in terms of clear ordering of our business tomorrow, which I think would be in the interest of all members of the committee, do I take it that we would start with the drugstore item, and then, if we conclude the drugstore item, continue with this item and these legal interpretations that Mr. Runciman has set? Perhaps I should just ask you if that is your understanding of how we will be proceeding tomorrow.

Mr. Chairman: I think it is, as a matter of convenience to the people who have attended, so they know they could attend and that would be dealt with. Do we have unanimous consent that that is the way we will proceed?

Mr. Kanter: On that basis, we certainly will give unanimous consent.

Mr. Hampton: I think that is fair enough.

Mr. Chairman: There is unanimous consent, then, that that is the way we will proceed.

The committee adjourned at 5:54 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

TUESDAY, DECEMBER 13, 1988



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Campbell, Sterling (Sudbury L) for Mr. McGuinty

Hart, Christine E. (York East L) for Mr. Mahoney

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Revell, Donald L., Senior Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witness:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, December 13, 1988

The committee met at 3:45 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 3:

Mr. Chairman: I recognize a quorum—in their seats, at the coffee urn and elsewhere in Ontario.

The next amendment is one by Mrs. Cunningham, which was moved previously on the floor. I will just repeat it for the benefit of those members here.

Mrs. Cunningham moves that Mr. Kanter's motion to amend clause 3(2)(c) of the act be amended by striking out "7,500" and inserting in lieu thereof "10,000."

Are there any members who wish to speak to this matter?

Mr. Hampton: I sat down last night after we agreed we were going to talk about this today and I went through some of the information. I have a problem basically with considering this material at this time.

Let me tell you what it is. I went right back to the minister's opening day speech to us on August 3 where, you may remember, we dealt at length with this issue. Mrs. Marland asked the minister a number of questions on this issue and—

Mr. Kanter: On a point of order: Mrs. Cunningham moved a very specific clause with respect to the number of square feet changing to 10,000. Is Mr. Hampton directing his remarks to that amendment?

Mr. Chairman: I was giving him a little more time to tell us how that happens. I think he is getting to it. Perhaps you could get to it a little more swiftly.

Mr. Chiarelli: On a point of order: I wonder if Mr. Hampton is aware of the motion that was passed late in yesterday's session whereby it was agreed unanimously, I believe, by the committee to deal with section 3 today.

Mr. Chairman: I had not thought of that. He should be made aware that it was undertaken because people had been here yesterday.

Mr. Ballinger: With the greatest respect, Mr. Hampton supported that resolution.

Mr. Chairman: I was not sure he was here.

Mr. Ballinger: Mr. Hampton was here along with Mr. Runciman and supported the resolution.

Mr. Hampton: Correct me if I am wrong. I thought the text of that motion was to be the first thing we would deal with today.

Mr. Chairman: The first order of the day.

Mr. Hampton: That is right.

Mr. Ballinger: It did not say how we would deal with it, Howie.

Mr. Chairman: I think it was undertaken that it would be the first order of business today. That is my recollection.

Mr. Kanter: —on the understanding, agreed to by all three parties and including Mr. Hampton personally, this item will be dealt with today and not deferred further.

Mr. Chairman: You are speaking to the motion.

Mr. Hampton: Mr. Kanter can place whatever interpretation he wants on it. That is not the way I remember it.

Mr. Chairman: Why do you not speak to the motion.

Mr. Hampton: I will speak to the motion. It seems to me that if we go back to the minister's opening-day statement—and I will refer to pages J-29, J-30, J-31, J-32, J-33, J-34, J-35, and J-36 of her statement—the minister said at that time that, based upon the consultation her ministry had done, there was reliable evidence that: "We had a great deal of trouble getting facts and figures on this, but we were able to ascertain from what we thought was going to be a reliable source, namely the Retail Druggists' Association, that 5,000 square feet would provide the kind of footage that would ensure most communities have a drugstore open in their community. This was the reason for the 5,000-square-foot figure."

Mr. Chairman: Mr. Hampton, if I could just stop you. I am not sure whether you got a copy of the December 12, 1988, memorandum from Susan Swift. Have you had a chance to read that?

Mr. Hampton: Yes, I have.

Mr. Chairman: That seemed to indicate there would be some communities that would be left totally without pharmacy or drugstore facilities if the amount was not increased. Just as long as you are aware of that, because I was not sure whether it had been handed out to every member yesterday.

Mr. Hampton: Yes, I have got it.

Mr. Chairman: That is our most recent research that we have on the matter.

Mr. Hampton: Yes. I will get to that, Mr. Chairman. As you are all aware, shortly before we began the hearings back on August 3 or shortly thereafter, almost every member of this committee was visited by representatives from Shoppers Drug Mart who put the argument to us in various

ways, talking about health care or talking about the need to have access to prescription drugs, etc., that it had to be increased to a larger level.

Mr. Chairman: Just for the record, I was not visited by anyone.

Mr. Chiarelli: On a point of order, Mr. Chairman, I wonder if perhaps you could read for the benefit of the members of the committee and people in the audience the motion that is presently being debated.

Mr. Chairman: I did read it. I read it at the outset. I read it and I indicated that we were debating the motion.

Mr. Chiarelli: But what is the motion. What is the wording?

Mr. Chairman: I read it. It was Mrs. Cunningham's motion and had been read before.

Mrs. Cunningham: Is this the 10,000-square-foot amendment?

Mr. Chairman: Yes. It had been read before and then Mr. Hampton indicated he wished to speak to it.

Mr. Hampton: I am speaking to it right now.

Mr. Chiarelli: Mr. Hampton is actually speaking to the motion rather than the procedure? I am having trouble following Mr. Hampton's debate vis-à-vis the substantive aspects of the motion. It sounds as if he is talking about a procedural matter and so therefore I think—

Mr. Chairman: I have not heard enough yet, Mr. Chiarelli, to indicate whether you are correct or not. If the point is not arrived at, then a point of order might be appropriate, but at the moment I have not heard enough.

Mr. Hampton: Most of us, I believe, were presented with a brief from Shoppers Drug Mart setting out, again, a variety of points on the size and locale of their drugstores. In fact, they even list—I think we even received a list.

Then, I believe, after that, about September 20, the research officer prepared for us—and you can correct me if I am wrong on the date, I think it was September 20—a summary of information and analysis with respect to drugstore service square footage. Right? That was September 20? Then, there was another one on September 27: "Further to our memorandum of September 20, we received information concerning our additional 140 drugstores." Right?

Further to that, I believe, we received additional information from Shoppers Drug Mart after that.

Ms. Swift: That is not my understanding.

Mr. Hampton: Okay. I could be wrong.

Mr. Chairman: We received it from another source.

Mr. Hampton: Then we received additional information, I believe, from—is it the convenience stores?

Mr. Chairman: No. The order I recall, Mr. Hampton, and I know you have not been here on a—you know, there have been various members of your party here.

Mr. Hampton: December 9, from the Ontario Convenience Stores Association: "I understand that you and your colleagues on the justice committee will be considering sections of Bill 113 pertaining to drugstores at your next meeting."

Mr. Chairman: I will have to check with the clerk, but I do not recall that being received or, at least, tabled. ♫

Mr. Hampton: It may not have been received by the committee, but I think individual members probably received it in the mail.

Mr. Chairman: I do not know.

Mr. Hampton: It says, "Recent press reports suggest the committee may be considering increasing the size restrictions placed on drugstores which open on Sundays," and so on.

Mr. Chairman: You are asking the research officer and obviously she is not—

Mr. Hampton: Okay. Maybe you have not seen that.

Ms. Swift: I have never seen that.

Mr. Hampton: But I think members of the committee have seen it. Then on December 12, which was yesterday, you presented your later material.

Ms. Swift: That is correct.

Mr. Hampton: Your latest material. Okay? I went back last night and I looked at it from beginning to end, and I am including submissions from Shoppers Drug Mart, your further research, the Ontario Convenience Stores Association. Quite frankly, I find it all very confusing now and I want to ask—

Mr. Chairman: What are you suggesting?

Mr. Hampton: I want to ask this question. I oppose the 10,000-square-foot limit. Based upon what information I have now, I oppose it. But I really wonder what sort of reliable situation we are in. We have had conflicting information from a number of different groups. I would think it only fair—now that the research officer has presented us with the latest figures—that we invite from the convenience stores association, that we invite from the Retail—

Mr. Chairman: Mr. Hampton, I do not want to interrupt you but, and again, I recognize you have not been here on every occasion. The committee has already dealt with that motion by one of your colleagues and it was defeated, and the reason, so that it is not perceived to be capricious on the part of the committee, was that there was a period during which public hearings were advertised as being held. We, in fact, received submissions after that date. We did not grant that privilege to those submissions afterwards. We did receive them in writing.

I am quite prepared to receive this in writing. We did not provide them with an opportunity to further address the committee since the public hearing dates had gone by and we were actually into clause-by-clause. It would be unfair to deal with other people in a different fashion. That was the rationale behind the vote that we not entertain, if that is what you are suggesting, further submissions from the public.

1600

Mr. Hampton: I have already stated my position on this amendment for the 10,000 square foot. I find us, collectively, in a situation where we have a variety of information before us. It seems that every time new information comes out, it differs from the information that came out a month ago.

Mr. Chairman: Mr. Hampton, in fairness to the research officer, there is a little bit of history that is required here. When we were looking at the question of determining a sampling for information about drugstores in the province, we had the option of either hiring a consultant, which was suggested to us by our research officer, or she would do the best she could. The committee unanimously, I believe, agreed that we would have the research officer do it.

Subsequent to that, we received certain information that, on its face, appeared to fly in the face of that. As a result of that, the subcommittee, as approved by the full committee, agreed to have research do it again. It is my understanding that if you read that report, you will find that the definition of the community was very extensive. We directed the research officer to look into it in terms of local municipalities. That is the result of the information that is before you.

Mr. Ballinger: That is why her last name is Swift.

Mr. Hampton: I am not doubting the capacity or the work of the research officer at all. I simply want to point out that, in the course of five months, we have received from various groups and organizations, including our own research officer, information which is quite contradictory.

Mr. Chairman: I do not want to interrupt your argument, but could I just know what you are going to be moving? I want to know whether it is an order or not.

Mr. Hampton: I am not moving anything. A motion has been put before the committee. I have laid out my position on it, but I also want to say that, based upon the contradictory information we have got, I really wonder where we are in terms of accurate information on this. I do not feel comfortable making a decision on this committee based upon the mishmash of information that has come back and forth depending upon which group you talk to. If I may say so, it seems to me a poor way to make a decision.

Mr. Chairman: No. That issue was not raised, as I recall, by Mr. Philip. He was fully aware and had been made aware of all this information well before this. Yesterday a decision was made that it would be dealt with today in view of the fact that the people are actually coming here; they came here yesterday, took up their time to come here. We deferred it on a unanimous-consent basis, because of Mrs. Cunningham's difficulty and also Mr. Philip's. If there had been some concern by Mr. Philip, I am sure we would have heard it before today. As I say, it comes as a surprise that you would indicate that you have some reservations about the information at this stage.

Mr. Hampton: I do not see how we can but have some reservations and some questions about it. How you can get a definitive answer out of what we have got here, in terms of what is going on across Ontario in terms of drugstores, is a difficult undertaking at best. I am aware that the Liberal members of the committee want to get on and they want to make a decision on this, but I make the comment based upon the information that has gone back and forth from various groups. I find it very uncomfortable and very difficult to make an informed decision on this issue based on this kind of information.

Mr. Chairman: Mr. Hampton, if you are going to debate—

Mr. Ballinger: That never bothered you before, Howard.

Mr. Chairman: Mr. Ballinger.

Mr. Hampton, if you are going to debate the amendment that is before us, please do so. If you are going to continue in the vein you are going, I am going to move on to another matter.

Mr. Hampton: I have made my comments, Mr. Chairman.

Mr. Chairman: All right. Are there any members who wish to speak to this matter?

Mrs. Cunningham: I am just wondering if any Liberal members are going to speak to it. I would like to hear what they have to say right now.

Mr. Chiarelli: You are off the hook, Diane. Fly with it. It is your amendment.

Mrs. Cunningham: I mean if they are all opposed to it, then I will just go ahead and make my comments, but if somebody has anything to contribute or any questions that can help us along on this one, then I would appreciate hearing it now. That is all.

Mr. Chairman: The rules require me to recognize whoever asks to speak.

Mrs. Cunningham: Oh, fine.

Mr. Chairman: The only proviso to that is that I would not hear from the same party twice. I would rotate it back and forth.

Mrs. Cunningham: You might have to on this one, Mr. Chairman, because we are here to make some decisions. I think all of us are interested in making the best decision.

The issue here I think, certainly for the public in Ontario, is the accessibility of pharmacy services on Sundays. We are now talking about prescribed drugs and other sundries that fit into the category, for which this legislation was written in the first place; decades ago, I might add. I do not think that any new legislation that is being introduced by this Liberal government should impair the marketplace to the extent that those pharmacists who were prepared to provide a service in the past, and who lived within the existing legislation, should be penalized in any way.

Some months ago, for that reason, I asked the research people who are assisting this committee to see what we could do in the way of making certain

that communities that have a service now are not going to be denied service. That particular research was done. Not only did we hear from our researcher, but we heard from different associations that had an interest over the summer.

More recently, we were given to believe that we might have gone a bit farther with our research because the smaller drugstores were telling us that in the communities where we thought there was no service available, there was indeed service available. That sheds a new light on the amendment that I have put forth, based on the original research, which showed that some 40 or 50 communities were without the service they have now.

I guess the most important point of the debate is that—I am perplexed and perhaps someone would like to respond to it—we are looking at a change in legislation because the present legislation, as it relates to drugstores, apparently cannot be enforced. The people who came and spoke to us with regard to this issue in the spring and summer may now be changing their minds with regard to enforceability, I can assure you and I will tell you why.

We have legislation for independent grocery stores right now, that has a size limitation of 2,400 square feet and limitation on the number of employees to three. Apparently, that particular aspect of the present law, which allows those special convenience stores to open on Sundays, has not been difficult to enforce. None of those stores have come to us and said, "We are having trouble, either counting people or numbers of square feet." My point is that the combination seems to work. However, we did have some of the drugstores come to us and say, "We would probably rather look at size because it is difficult to enforce the four-employee restriction."

I wonder about that now, because we have ourselves in a real mess, and I am talking about all of us on this committee, where we have been trying to look for a solution. Would you agree, Mr. Chairman?

1610

It seems to me that there is not one exception, in spite of the jokes that are passed back and forth, to the bottom line and that is, we all want to make something work here. I do not think this is a particularly easy thing to do. My amendment of 10,000 square feet was to do that, was to say for the people who are open now, we are not going to penalize you and close you up. I still think given that particular objective, that the 10,000 square feet, in spite of the research, would be reasonable.

We are having all kinds of objections now based on the fact that that larger drugstore which is now open is providing a form of competition to other stores that are not allowed to open because they are selling products that are not considered emergency or necessary for the needs of families. That is the big argument right now and we are trying to appease everybody in this debate.

Mr. Chiarelli: On a point of order: I am not sure whether Mrs. Cunningham is suggesting that she is going to withdraw her amendment or what. I would like to maybe put a little finer point on the case she is making. Is she suggesting she is withdrawing her motion and she is going to replace it with a different motion?

Mr. Chairman: That is not a point of order.

Mrs. Cunningham: In this job of decision-making for Ontario that all of us have been entrusted with, I think anybody with some good ideas as to how

we address this very real problem for our communities, and in fact for business people, should put their ideas forth. That is what I am trying to do.

I may be accused of thinking out loud, which I have never been ashamed of doing, and that is why I asked the Liberal members of this committee that if they have anything to say about the 10,000 square feet, they assist me, because quite frankly Mr. Chiarelli is correct, I am not certain whether to withdraw it or not based on the information I have.

I share my colleague's point of view which is that it is a very difficult decision to make and we are trying to make a fair decision here. Based on the information we have right now, I am finding it more difficult to let my amendment stand. What I am trying to wrestle with is this: If in fact with the present legislation we have had no input on the 2,400-square-foot, three-employee limitation—otherwise the combination—for convenience stores that open on Sunday, perhaps that is a combination that we could be looking at for the larger drugstores.

What I am now talking about is that if we are to go to 10,000 square feet because those stores are open now with four employees, perhaps to be fair and not to interfere with the marketplace and not to penalize people who have been providing a very necessary service in their community—and I might add, we are looking at computerized prescriptions—and people who have been used to going to these stores that are larger than 7,500 square feet for service—

Interjection.

Mrs. Cunningham: No, I am talking about the store that is 7,500 to 10,000 square feet that is now open and that is now providing a service. Bearing in mind that the reason the Solicitor General (Mrs. Smith) introduced this legislation is that she did not like "roping off" and she also said that this particular aspect of the legislation, i.e., no more than four employees, was particularly difficult to enforce.

We do not have examples of that challenge and I think now that the drugstores have been following this debate—if they have bothered to follow it—and they will see our dilemma. That is that the research tells us that very few communities would in fact be missing the service they have now if we were to stay at 7,500 square feet.

However, if you lived in one of those eight or nine communities and you then had to get in the car and drive some 60 kilometres to 100 kilometres to the nearest open drugstore, if you had to change the pharmacist with whom you had been dealing for a number of years, if you had to go to a smaller community where the pharmacist was now prepared to open on Sunday but who did not have a computerized service or other kinds of pharmaceutical aids because it was a smaller store and did not provide that kind of service, then I would have to say—and I am now talking about home care products—that that would be a very big disservice to a number of citizens in these small communities.

What I am tempted to do right now is to say that I would be prepared to let my amendment stand and add to that amendment that not more than four employees be at that particular location on Sundays.

Mr. Chairman: Are you going to be moving an amendment then?

Mrs. Cunningham: Based on what we were able to read yesterday from the research and based on the phone calls that we have been able to complete

today—I feel rather rushed with this, by the way, given the new information that we received yesterday. I understand there was some concern in the committee about dealing with this particular issue. So I would need the amendment to be drafted.

Mr. Chairman: My concern was not in the committee, as I perceived it; it was because there are people here today, as there were yesterday, who are obviously interested in the result of this matter. We had also agreed, originally, to put it over to December 12, which was yesterday, and we delayed it because of difficulties that Mr. Philip and you had.

We have legislative counsel here, if he can—

Mrs. Cunningham: I would like someone to draft that so that we can all look at it in the way it ought to be written.

Mr. Chairman: What are you adding to it?

Mrs. Cunningham: I am adding that, as well as the 10,000-square-foot restriction, there would be a restriction of not more than four employees. If one would look at the present legislation, it talks about not more than four employees now but not about the 10,000 square feet.

Mr. Chairman: How about this: You are moving Mr. Kanter's motion to amend clause 3(2)(c) of the act be amended by striking out "7,500" and inserting in lieu thereof "10,000 where there were no more than four employees."

Mrs. Cunningham: Yes, whatever the appropriate language would be.

Mr. Chairman: Are you content with that? All right. Any further comments?

Mrs. Cunningham: Could I ask a couple of questions of the solicitor, because I am wondering if I should be even more specific? Is it now a requirement of the Health Disciplines Act—I think I would be appropriate in using that terminology—that a registered pharmacist be on the premises when a drugstore is open?

Mr. Chairman: It is part of the law, I understand, from legislative counsel's comments on a previous occasion. Mr. Spring, maybe you could help us. Is a pharmacist required to be on the premises?

Mr. Spring: I believe that in accordance with the relevant legislation, a pharmacist is required to be present in a drugstore when prescription drugs are being dispensed, when the prescription counter is open.

Mrs. Cunningham: Then I am going to go a step further in my amendment, if Mr. Spring can just bear with me. An example came to the notice of our office this morning of a drugstore in the Eaton Centre that was closed during the week and the sign on the door said, "Drugstore Closed Because a Pharmacist Is Not on the Premises." The person who called me was led to believe that a pharmacist had to be on the premises when a drugstore is open. I just want to make certain that I am correct.

When the drugstore is open during the week, it is not necessary for a pharmacist to be on the premises except when drugs are being dispensed. Is that correct?

Mr. Spring: You have me there. I am reasonably certain it is only a pharmacist licensed under the Ontario College of Pharmacists who can prescribe drugs. As to whether the store can open with the prescription counter closed in the absence of a pharmacist, I cannot say whether the legislation dictates one way or the other. Speculation is probably fruitless, but I would see no reason why a licensed pharmacist would have to be on the premises if in fact the prescription drugs were not being dispensed. I cannot help the committee more than that at the present stage.

1620

Mrs. Cunningham: Is that something that if given some time, Mr. Spring could look into, Mr. Chairman?

Mr. Kanter: Could I ask a supplementary question along the lines of what Mrs. Cunningham said? Mr. Spring, I see a section where we all have some difficulty interpreting some of the details, but under the current act, subsection 3(2) says, "Section 2 does not apply in respect of the carrying on of a retail business on a holiday in a pharmacy accredited under part VI of the Health Disciplines Act, where on that day (a) the dispensing of drugs upon prescription is available to the public during business hours." Would that provision relate to the concern that Mrs. Cunningham raised? Would that not relate to that issue of requiring a pharmacist?

Mr. Spring: That has the effect of saying that a drugstore can open on Sundays and other holidays where the prescription counter is open; in other words, where there is a licensed pharmacist available to prescribe drugs.

Mr. Kanter: Where the counter is actually open and a pharmacist is actually on duty?

Mr. Spring: That is correct.

Mr. Kanter: A drugstore, under the current act and the proposed act, could only be open on Sunday if the prescription counter is open and there is a registered pharmacist on duty to prescribe drugs. Is that correct?

Mr. Spring: That is correct.

Mr. Kanter: Thank you.

Mrs. Cunningham: That is under the current act. Is that correct? Is that in Bill 113? Were you quoting Bill 113?

Mr. Spring: No, that is under the current act and would remain the same under the Retail Business Holidays Act amendment.

Mrs. Cunningham: Could you tell me what section it is under in Bill 113 right now?

Mr. Spring: It is not included in Bill 113. That section remains unchanged.

Mrs. Cunningham: Okay, I want to make certain I am correct here. If we go to the four employees, the present legislation would require that one of those employees would have to be a pharmacist if the pharmacy section of the drugstore was open. Is that correct?

Mr. Spring: On a holiday, yes. That is correct because the prescription counter, if you will, is required to be open in order to let the drugstore open on the holiday. The prescription counter can only be open if there is a licensed pharmacist available.

Mrs. Cunningham: The reason I am pursuing it is that obviously the intent of the legislation, when it was first drafted some decades ago, was to provide prescription drugs. The present Retail Business Holidays Act does that. Here we are looking at legislation that works, quite frankly.

The only reason I am making this particular amendment is to protect right now the services that the public has and to protect what I call the marketplace that has been willing to serve the public in the past. That is the only reason I am making it. But I do think we have to have this amendment along with the 10,000 square feet in order to protect the present marketplace and quite frankly to not allow the drugstore to be open for certain without the pharmacist there. That is why I am making that particular amendment.

A question again to the solicitor.

Mr. Chairman: Why do you not stay there, and not spring back and forth?

Mrs. Cunningham: The reason I am putting the four employees there is to be consistent with present practice. We are not doing it for up to 7,500 or 5,000 square feet. They now can have more than four employees. We are really allowing more goods to be sold in those particular drugstores because more people are there to service the public, given the amendments of the government to the present Retail Business Holidays Act.

I am very much aware that this particular amendment is somewhat discriminatory to the larger drugstore, the reason being that really what we do not want is any more people than necessary working on Sundays. That is another reason that I put this amendment forth.

Mr. Chairman: Mr. Spring, could you clear up something for me? Is the size of the drugstore one of the items that the municipality, under the local option, could decrease or certainly increase?

Mr. Spring: Yes, it is.

Mr. Chairman: In fact, if they found that 7,500 was too much, they could increase it up to 10,000 if they wanted.

Mr. Spring: In accordance with the proposed amendments, yes.

Mrs. Cunningham: On that point, I think what we heard from the public during the hearings was that it was wanting to protect as far as possible increasing numbers of people working on Sundays. I do not think there were too many people who came to us and told us they did not want to shop on Sunday. That is a given, but what they did come and tell us is that they were there to speak on behalf of people who have to work on Sunday.

You are quite right in that anybody, at any time, can go to the municipality, given this piece of legislation introduced by the Liberal government, and open or in fact close the drugstores. I think what we are trying to do here is to avoid going to the municipalities, wherever possible, even though that option is available. I think it is up to this government to

set guidelines, to write legislation that works, so that people do not have to go to municipalities, even given this very weak legislation that will be much harder to enforce than the existing legislation. Given your question, I know where you are coming from, Mr. Chairman.

Mr. Chairman: I was not coming from any place. I am just trying to understand something.

Mrs. Cunningham: It is just that you have been so impartial all along. I take back my comment.

Given the response to your question, I think one should keep in mind that, wherever possible, we should be writing legislation where municipalities do not, in fact, have to be involved. First, they do not want to be involved. Second, it is extremely time-consuming. Third, it is extremely expensive in both money and resources. Families have more to do, and so do business people, than be constantly parading into municipal offices, appearing before different committees if they do not have to, so I think it is up to the province to set legislation that makes good sense.

I believe my amendment contributes to this legislation and in fact preserves what we have now. Although the Liberal members of this committee think that the size of a drugstore is more enforceable than the numbers of employees, I would say that is not what they are doing to the other part of the act. They are not changing it at all. Therefore, I do not understand the argument. We have absolutely no proof that this legislation has not been upheld in the courts.

So, I close on my amendment. I have made my arguments, I hope, as succinctly as possible.

Mr. Chairman: Okay. Mr. Kanter.

Just before, if I could just ask the corollary to my first question to you, if the size was set at 10,000, would a municipality be able to pare that down to less than that by a bylaw?

Mr. Spring: Yes, they could.

Mr. Kanter: First of all, I want to welcome Mrs. Cunningham here. I know that she has had a sincere interest in the matter of drugstore sizes from the beginning of the committee and there have been many discussions that took place with witnesses in the hearings.

Mr. Chairman: Do you want to wish her compliments of the season?

Mr. Kanter: No, but seriously on this point—

Mrs. Cunningham: I am waiting for the "however" or the "but."

Mr. Kanter: —Mrs. Cunningham has had a sincere interest in this matter. I do have some difficulty—

Mrs. Cunningham: I think we all have had.

Mr. Kanter: I agree with that. I do have some difficulty with her motion. It appears that her motion to go to 10,000 square feet but set an employee limit on it seems to be heading off in both directions at the same

time. I think that is a little difficult. Let me explain the problems I have with her motion and also why the members of our party will not be supporting it. First, we think the size limit is excessive.

1630

Mrs. Cunningham: How do you know they are not supporting it? I am just putting it right now. I have not heard from them.

Mr. Ballinger: Don't worry. Just hang on to your hat.

Interjections.

Mrs. Cunningham: No, it was not. The four-employee limit was introduced just seven minutes ago and I thought it was a darned good one, and I would like to hear people who represent the public speak to it, if you do not mind, Mr. Chairman.

Mr. Ballinger: Just hold on to your hat.

Mrs. Cunningham: I am talking about the democratic process and responsibility and accountability and all that.

Mr. Ballinger: Oh, and how many drugstores in your riding have more than 10,000 square feet?

Mrs. Cunningham: I am thinking of all Ontario.

Mr. Ballinger: Come on.

Mrs. Cunningham: I cannot even answer your question.

Mr. Chairman: Your interjections are out of order and they are evoking interjections from Mr. Ballinger, which are also out of order. Mr. Kanter, you have the floor.

Mr. Kanter: The reasoning that Mrs. Cunningham first spoke of—that is, letting the market forces prevail—seems a bit ironic in view of the general position of the party, which has been that Sunday shopping is an evil which should be eradicated and prohibited.

I also have some question about how she arrives at the 10,000-square-feet figure in view of the arguments of others who follow that same line. The discount drugstore operators, for example, would argue that they should be allowed to operate. They have been operating for some time, I would say, in breach of the current law because the law on the number of employees is unenforceable.

I think the practical history of pharmacy operations in Ontario shows that it is difficult, if not impossible, for the police to enforce the limitation on the number of employees. There are great difficulties with enforceability there.

I would like to review very briefly, because Mrs. Cunningham referred to it and Mr. Hampton referred to it, the process by which we have arrived at our position on looking at the square footage and choosing the figure of 7,500 square feet, which we will be proposing should this amendment be defeated.

In the minister's statement, which Mr. Hampton referred to, she indicated some flexibility on the size of drugstores, pending further research. We had research from our committee. Ms. Swift did quite an extensive job in a document dated September 20 which she looked at and she indicated very clearly what it was she was looking at. She looked at a number of drugstores, about half the drugstores in the province, and found that at that time that, and there are two separate figures here, but something like 95 per cent or 98 per cent of the drugstores in the province were under the 7,500 square feet range.

I would also point out, just to remind Mrs. Cunningham and all members of the committee, that there were many representations during the hearing phase of the committee. There were not representations by just one chain. There were representations by independent druggists arguing that 7,500 square feet was now the size of a traditional drugstore. Perhaps it had not been in the past, but it was commonly accepted as the square footage now.

I was just reminded of some material by the Canadian Council of Grocery Distributors. They are a group, I should point out to remind all members of the committee, of responsible retailers who want to stay closed on Sunday. I believe that is the position that Mrs. Cunningham, if she is listening, would support, the position of the Canadian Council of Grocery Distributors. They talk about drugstores. They talk about the problems faced by food retailers who want to remain closed on Sundays, as Mrs. Cunningham would want them to do. One of the worst transgressions faced by food retailers has been the dispensation afforded to pharmacies.

Mrs. Cunningham: Could I have the last sentence repeated?

Mr. Kanter: I believe that Mrs. Cunningham would support the position of this group which is opposed to being open on Sunday, the Canadian Council of Grocery Distributors. They appeared before our committee in September this year. I am sorry I do not have the date. I am reading from page 5 of their brief: "Our industry would welcome the introduction of a size limit for Sunday trading. The maximum size which we believe is reasonable for that retail group, given their existing operations and financial structure, would be 7,500 square feet."

More recently, and there was reference made earlier in the debate today, there were some further representations that—certainly if 7,500 is too big, I presume the same groups would feel that 10,000 square feet was too big, but there were some representations by a number of people, retailers of various types and various groups, saying 7,500 square feet was too large.

I think the committee reacted very responsibly to that. We could not hear further deputations at this time because we had spent most of the summer hearing deputations. We had made a decision. All parties had decided not to hear further representations. However, we did request some further information from our staff. We received that information yesterday and many of us have not been able to look at that information. That information, while directed primarily, I think, at a possible motion to reduce the size of drugstores to 5,000 square feet, I believe is also relevant to consideration of Mrs. Cunningham's motion.

That research surveys 29 communities in some detail. I want to commend the research staff for a substantial amount of work they undertook on this. If you look at the survey they have done, they find there are a substantial number of communities which would be affected if we reduced the size of

drugstores to 5,000 square feet. They point out that communities like Cornwall, Lindsay, Barrie, Georgetown, Fort Erie, Wingham, New Liskeard, about 25 per cent of the communities they surveyed, would be cut off from having any drugstore open on Sunday if you put the figure below 5,000 square feet. That is why we are sticking with our figure of 7,500 square feet.

On the other hand, and I think very relevant to the motion by Mrs. Cunningham, I have looked at all of the communities surveyed and find that in not a single case would expanding the size of drugstores to 10,000 square feet result in a community which would then have a drugstore open, which does not now have any drugstores open.

I think this research is very useful for two reasons. I think it suggests that the position of 7,500 square feet is reasonable. It would permit residents in most communities in Ontario to continue to have prescription drug service. It would permit what has become a traditional drugstore to continue to operate. It would be neither excessive in terms of encouraging people to start enterprises primarily for the purposes of operating in Sunday and sort of have prescription drug sales on the side to permit them to do other things, nor would it be unduly restrictive.

I just want to add one short further comment. There may be a few communities affected by this restriction. As the chairman pointed out, there is a local option. People can go to their local community and to their local council and seek an exemption. There was some concern expressed before our committee. Again, members will recall there were a number of representations by druggists in various communities, some of whom had stores bigger than 5,000 square feet, some with stores bigger than 7,500 square feet, some with stores bigger than 10,000 square feet and some with stores a lot bigger than 10,000 square feet, and they felt that the current bill was a little harsh in that they were not being allowed a one-year period of grace.

I would just like to remind members of the committee that we have placed an amendment before you to be considered, hopefully later today, that will give all drugstores over 7,500 square feet a one-year period of grace to either reduce their size to 7,500 square feet or to go to their appropriate council to seek permission to operate at a larger size.

Those are the reasons I will not be supporting Mrs. Cunningham's motion, as amended. I would urge all members of the committee to not support Mrs. Cunningham's motion, as amended.

Mr. Chairman: Any further debate on Mrs. Cunningham's amendment?

Mrs. Cunningham: I would just like to respond to what Mr. Kanter stated.

Mr. Chairman: Certainly. That is appropriate.

Mrs. Cunningham: I respect his opinion. There is no doubt about it. I think he is thinking of the best solution as well for the province. I have some difficulties with some of the comments he made.

I do not think at any time that the Progressive Conservative Party has said that Sunday shopping is evil, that it ought to be eradicated or prohibited, and those were your words. I think what we have said is that any extension of Sunday working is something we do not support and it is as simple as that.

The other comment was never stated on my part or anybody else's. We support a common pause day and we have not talked about Sunday shopping in that respect. We have tried only to talk about Sunday working.

The other comment, with respect, of Mr. Kanter was that he did not understand the rationale around the amendment. I gave two rationales and I will say it again.

First, these stores are open now. They are meeting the needs of a very real public and they are meeting the needs of the community. We have not had examples of stores of this size where enforceability was a problem. The legislation has been upheld in the courts otherwise. We have had, with drugstores of over 25,000 square feet, the roping off which the Solicitor General spoke of in the beginning, and I share her concerns.

I just want to go on the record as saying that if you do not understand the rationale, that is it. It is very simple. You may disagree with it, but the point is that we are trying not to interfere with the marketplace and we think that these stores are providing a very real service. I can speak specifically of a store in North Bay which is even larger than 10,000 square feet. We cannot do anything to help it with this amendment.

I am telling you, there are stores right now that are providing very real services, by the way, including my own pharmacy which is over 7,500 square feet—not a lot, but more than that—which has provided a service to our family for some 19 years and was the only drugstore willing to open for very many small communities just north of the city of London for a very long time. They will now have some difficulty complying with legislation and that is of great concern to myself for the community I represent and that is what I am here to do. Whether one agrees with me or likes it, that is my job and that is what I am doing. I also happen to believe in it.

I have talked about the difficulty to enforce. I do not agree with you. You talked about the minister saying in her statement that she would be somewhat flexible and I would say that it was more a mistake, that she was given very poor advice. I know that nobody in presenting this legislation would have wanted to cut out the services you yourself described.

I do have a question for the researcher before I sum up, given the most recent legislation. I am having some difficulty here in understanding, given what you have done for us. If this amendment fails, in what communities you surveyed will there be stores which will not have services because we will be forced to make the limit 7,500 square feet, given the research we have in front of us, going down those columns?

Ms. Swift: Which communities would be left without any drugstore service?

Mrs. Cunningham: Yes, of the ones you called.

Ms. Swift: If you leave it at 7,500 square feet?

Mrs. Cunningham: Yes.

Ms. Swift: There are none. Every community I surveyed would have drugstore service if the limit was anywhere up to 7,500 square feet.

Mrs. Cunningham: Okay. Really, the ones missing were the larger

communities. We are having difficulty talking about communities now. Let's face it, in a very large municipality, you may have to drive some 20 or 30 kilometres across the city to the nearest drugstore, because we did not in fact survey the larger municipalities. Is that not correct? London is a good example or Ottawa or Toronto.

In fact we were advised in the very beginning that those are the communities sometimes where the very small drugstores are closed and may be the ones that would have shown up. I am complimenting you, quite frankly, because you answered the question we asked you. I had some input into who you did call so I was aware you were not phoning London, but I do not want anyone to think there will be communities which have service now that in the future will not have service because of this particular bill in itself, and there will be even less service if this amendment in fact does not pass.

I do not want to let anybody think that everybody is being serviced who is now being serviced by the 7,500 square feet, because it is not true. There will be parts of communities that will not have, within a reasonable distance, the service they have now and I do not think that is what Mr. Kanter was trying to say.

Mr. Chairman: I do not want to cause concern out there among people, because Mr. Spring did give you the examples of how that could be rectified.

Mrs. Cunningham: I understand what you are trying to say. I might add—

Mr. Chairman: I am just trying to keep the record straight.

Mrs. Cunningham: It now means that druggists, professionals, who go to school to serve the public, who are providing a professional service, will indeed have to become lobbyists in their own municipalities. We only have so much time in our lives and I used to say the same kinds of things when I was on the school board. Let's not have unnecessary meetings so that parents have to come down and stick up for their children or make very common-sense approaches to the school board when they would be better off at home helping with homework or doing whatever else they can do.

I am just telling you right now that druggists will have to go to the municipalities and lobby the municipality one way or the other if they want their drugstore open. It is as simple as that. That is what this legislation means.

In fact, if you are a little grocery store owner right now in some small part of rural Ontario and your municipality goes through the public process of not having you open, for whatever reason, you have a problem. It is the same thing. That is what this whole municipal option means. Stores, any kind of stores, at the wish of the local council, can open or close on Sunday. That means anybody may or may not have to work.

Mr. Chairman: I should have kept my mouth shut.

Mrs. Cunningham: Yes, you should have.

Mr. Chairman: All I was trying to do—

Mrs. Cunningham: Every time somebody gives me that local option, he will get the same lecture. That is how I feel about it.

Mr. Chairman: No, all I was trying to do was to clarify what Mr. Spring had said.

Mrs. Cunningham: I know. In closing, this amendment will not pass because what we have here is a very large majority government, with, everybody can see, a whole bunch of Liberal backbenchers and others sitting on these particular committees and we have no hope of getting—

Mr. Kanter: On a point of order: Mrs. Cunningham was not here, unfortunately or fortunately as the case may be, when the government accepted a number of opposition amendments, including some put by members of her own party.

Mrs. Cunningham: Our amendments, as this one does, make good sense. I cannot see why you would not support them.

Mr. Ballinger: Get serious.

Mrs. Cunningham: I congratulate you for showing a lot of common sense because all our amendments are trying to do is clean up a mess. If I was not here, I certainly read about you and I was not surprised, because I would give you at least that amount of credit that you have good common sense.

Mr. Chairman: We are not debating Mr. Kanter's credit or lack of credit; we are debating the amendment.

Mrs. Cunningham: The fact that these backbenchers got stuck with this rotten legislation is their problem now. That is what happens to great big government and nobody knows that better than us. I will tell you right now, if you support this legislation and push it through, you can, as I said to Mr. Ballinger over the months, kiss your seat goodbye in the next election.

Mr. Ballinger: Have I got news for you, kiddo.

Mrs. Cunningham: On that happy note, I will close debate on this amendment. Thank you very much for your attention.

Mr. Ballinger: I am certainly not going to sit here as a government member and listen to that tirade and sort of inflamed rhetoric, as Ms. Hart used to say, as it relates to big, bad government and all of us bad Liberals.

Mrs. Cunningham: Why do you not say something important, for once?

Mr. Chiarelli: You just hang on there. The whole purpose of this amendment, and I have participated in this process from the beginning to the end, and happen to think that my attendance in this committee is as good as anyone else's—

Mr. Chairman: We are not at the end. Unfortunately.

Mr. Chiarelli: You are right. We are not at the end.

This is Mrs. Cunningham's amendment. The only community that I was in where anybody made a pitch for 10,000 square feet was in Mrs. Cunningham's own municipality. We cannot find anybody on this committee in the discussion who has even entertained the idea of talking about 10,000 square feet. If you think that is logical and that your amendment makes good common sense, then I am surprised, because—

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Mrs. Cunningham: On a point of personal privilege: I would like to respond to that.

Mr. Ballinger: I am not finished yet.

Mr. Chairman: Personal privilege.

Mr. Ballinger: I am not—

Mr. Chairman: Just a second.

Mr. Ballinger: I would not have it any other way.

Mrs. Cunningham: Keep going, Ballinger.

Mr. Chairman: Let us hear the point of privilege.

Mr. Ballinger: The interesting part about the discussion that Mrs. Cunningham is now making is that when governments at any level prepare a piece of legislation or a bylaw, it cannot be expected to cover each and every individual. At least with the cap at 7,500 square feet what we have is the opportunity for those few businesses in Ontario that may have fallen through the crack because they exceed that number to have that option through this legislation to go to their regional council or their local council to request to be identified as an existing use and one that is providing the needs of the community that Mrs. Cunningham so righteously speaks of.

It is really interesting, because on the one hand the opposition has been arguing that local option is going to lead to wide open Sunday shopping. We, as a government, have said all along that is just not true. It makes great press for the opposition members. They have a wonderful time. They have had a wonderful time all summer with it. What it tells me is what we have been saying all along: that they do not trust the logic of the local government to make the decision.

Here is another classic example with the point that Mrs. Cunningham made about "what we are doing is educating pharmacists to become professional lobbyists." I want to tell you that that is absolutely hogwash. What we are doing here is putting in place a piece of legislation that will cover at least the majority of those facilities or those pharmaceutical stores that are operating now. Susan Swift, the research officer, has proven that with factual evidence. We are talking about a very minimal amount of inconvenience for some people. We cannot possibly cover everyone in this legislation, but there must be a cap somewhere.

We started as a government at 5,000 square feet and through the process, and in fact, other than Mrs. Cunningham, in here the majority on all sides agreed that 7,500 square feet was a reasonable compromise. Again, I want to make this point. It is Mrs. Cunningham in this forum who is the only one who is pushing for 10,000 square feet. I am absolutely amazed today, because I have seen probably one of the best skating lessons, on the part of Mrs. Cunningham, in a committee since I have been here in the last year. Arthur Murray has nothing on you, quite frankly, by coming in here today to try and justify your 10,000 square feet now because you are getting a little heat from some lobby groups out there who happen to think—

Mrs. Cunningham: I do not have time to get heat in my job.

Mr. Ballinger: There is absolutely no question in my mind. Somebody is cooking your goose, because here you are today introducing an entirely new amendment about four employees which has never been discussed whatsoever. I believe that happens to be Mrs. Cunningham's justification now so that she can satisfy herself on why she is going to support her own amendment. If you, Mrs. Cunningham, think 10,000 square feet makes all kinds of sense, as you said, then I tell you that that logic just escapes me.

Mr. Chairman: The pot has been stirred.

Mrs. Cunningham: May I just make one point?

Interjection.

Mr. Chairman: Wait. Mr. Chiarelli wants to stir the pot a little further, I think.

Mrs. Cunningham: On a point of personal privilege: The point that I absolutely object to is that I was the only person who raised this issue. I read the briefs. You can tell me to be quiet if you want to, but I think one group has been totally ignored.

Mr. Chairman: What is the point? A point of order, is it?

Mrs. Cunningham: The point is, I am not speaking for one drugstore in London and that is not the only brief. I have a number of briefs right here. I have just started. The Ontario Discount Drugstore Association says, "The draft legislation would allow drugstores to continue to serve the public on Sundays."

Mr. Chairman: Excuse me, Mrs. Cunningham.

Mrs. Cunningham: I am sorry.

Mr. Chairman: That is not a point of privilege.

Mrs. Cunningham: It certainly is. I was accused of being the only person to support this with one drugstore in London and I want to correct the record.

Mr. Ballinger: I said it was the only community.

Mrs. Cunningham: The only community. Okay. Mr. Chairman, in all fairness—

Mr. Chairman: Order, please. You want to correct the record.

Mrs. Cunningham: I certainly do.

Mr. Chairman: You will have an opportunity to do that. The next speaker I have on my list—

Mrs. Cunningham: The longer you give me the longer the record is going to be, I will tell you that.

Mr. Chairman: —would have been Mr. Chiarelli, but because you have asked—

Mrs. Cunningham: We already have 14 presentations—

Mr. Chairman: —because you have asked to respond and because we have been rotating—

Mrs. Cunningham: You have them. Do you want to give me another one? It is called doing your homework, Ballinger.

Mr. Chairman: I am going home in a second. Do you realize what you are doing to our ratings around Ontario? People are turning off their television sets all over Ontario right now.

Mrs. Cunningham: This is better than One Flew Over the Cuckoo's Nest and it is free, I will tell you that right now.

Mr. Chiarelli: I am not sure my remarks are going to be appropriate after that little dialogue, but I did want to say a few things in conclusion vis-à-vis the size of drugstores.

Mr. Chairman: Do not be sure it is in conclusion, Mr. Chiarelli. From my feeling, we were close to that, but I think we have lost it.

Mr. Chiarelli: This will be my conclusion, Mr. Chairman. The bill in its original form started out at 5,000 square feet. We received a lot of public input; in fact, we received a significant amount of research dealing with 5,000 square feet. It came to the attention of members of this committee that perhaps 5,000 feet was not an appropriate size for this section of the bill, and when we went into clause by clause, the amendment was made for 7,500 square feet, which a large number of people thought was appropriate.

Subsequent to that, there was an amendment to the amendment for 10,000 square feet. We requested additional research and we obtained additional facts. I think the committee as a whole, in spite of some of the vitriolic dialogue, has acted very responsibly on this particular issue in arriving at 7,500 square feet; I am anticipating that result. I think the province and this committee are well served by the process, because we know at this point that there will be very few communities which will be put out by this particular size of pharmacy. In Mrs. Cunningham's absence, I will say that is one reason for the local option, for those very few communities which will not be served. They will be able to go to their city hall for a bylaw.

One last point with respect to the issue of drugstores: Some people will be negatively affected by the 7,500 square feet, that is, those pharmacies which exceed 7,500 square feet. I am satisfied that when we get into further amendments we will deal with at least some transitional requirements which will help ease the pain, if I can put it that way, for those pharmacies which may be required to close as a result of the passing of this legislation.

In conclusion, I simply want to say that I think the process of this committee is working. I think it is working responsibly. I think we have had excellent research. We have had excellent debate on a full range of possibilities.

Mr. Chairman: I am waiting.

Mr. Chiarelli: On that positive point, fortunately—

Mrs. Cunningham: Would you like to repeat what you said—

Mr. Chiarelli: I was saying good things about you, Mrs. Cunningham, and you missed it all. You will have to read it in Hansard.

Mr. Chairman: Thank you very much, everyone, for your contributions. Mrs. Cunningham, do you wish to—

Mrs. Cunningham: Yes. I do.

Mr. Chairman: Okay. Go ahead.

Mrs. Cunningham: I will not sit here and be accused of speaking on behalf of a single drugstore or one presentation in London. It is not my style. I am trying to look at the total amendment as it meets the needs across the province. I was the one who asked for the research in the first place, and I worked with Ms. Swift in the last week to make certain we get the best information possible. It has been a lot of hard work and I am not going to sit here and be accused of that.

A whole group of drugstores made a presentation to us, in fact a number of presentations: the Ontario Discount Drugstore Association. I do not want them to think we have left them out in our debate. They have a very good point. They say:

"Even if the 5,000-square-foot maximum is increased to 8,000 square feet, as the government has indicated it will be, the 34 stores operated by the Ontario Discount Drugstore Association may have to close. Sunday sales are essential to the operation of discount drugstores. Without them, the stores will either be forced to close or forced to increase prices. Our prices average 27 to 30 per cent less than our competitors." They go on to say: "In addition, the 34 stores in the ODDA and their suppliers provide direct and indirect employment for 3,900 people. Those jobs will be lost if we are forced to close."

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They did make a presentation. They did make a point. In fact, I think they provide a very good service. I had to make up my mind about excluding them, and it was not easy, I will tell you that right now. That is one group.

We can then go on to talk about the other drugstores, if you really want to listen. We heard from a drugstore in Barrie. We heard from a drugstore in Sault Ste. Marie. We heard from a drugstore in Bramalea. We heard from another drugstore in Westwood Mall, Malton. We heard from another one on Dufferin Street in Toronto, another in the Jane-Finch Mall in Downsview, another in Weston and another on Yonge Street in Aurora. I could go on and on. These were all people who had signed the presentations which were before us. I am not simply speaking to one. The reason I spoke to the one, as I did, with such authority is that I know what kind of service is provided.

Quite frankly, with the 7,500 square feet, I am told there will be adjustments made. I do not have an individual interest here at all.

Mr. Chairman: Okay. I think you have corrected the record.

I will read the motion as amended, because I put the wording in and then we had legislative counsel do it.

Mrs. Cunningham moves that Mr. Kanter's motion to amend clause 3(2)(c) of the act be amended by striking out "7,500" and inserting in lieu thereof

"10,000"—you amended it; I presume it was a friendly amendment—"and the number of persons engaged in the service of the public does not at any time exceed four."

Are you ready to vote?

Mrs. Cunningham: We are voting on my amendment now, is that correct?

Mr. Chairman: That is right.

Mrs. Cunningham: I have another amendment to place depending on what happens to this one.

Mr. Chairman: Okay. Are we ready to vote on this?

Those in favour of Mrs. Cunningham's amendment?

Those opposed?

Motion negatived.

Mrs. Cunningham: I have another amendment.

Mr. Kanter: I think the proper and appropriate process to follow would be to move to the government motion, which was introduced some time ago, which would strike out the figure "5,000" that now appears and insert in lieu thereof "7,500." That would be the amendment to consider next.

Mr. Chairman: That motion has been moved, and what Mrs. Cunningham is indicating is that she intends to amend that, which would mean that we would deal with the amendment. I have not heard the amendment yet—

Mr. Kanter: I had not realized her amendment was to my motion.

Mr. Chairman: What is the amendment?

Mrs. Cunningham: It is the same amendment I made to my own 10,000 square feet, that the limit be four. It is a restrictive amendment. The intent is to be restrictive. I will place that on the record at this time.

Mr. Chairman: You are amending it to read as the government amendment presently reads, only—

Mrs. Cunningham: It is an amendment to the amendment.

Mr. Chairman: —you are adding the words, "and the number of persons engaged in the service of the public does not at any time exceed four."

Mrs. Cunningham: That is correct.

Mr. Chairman: Mrs. Cunningham moves that clause 3(2)(c) of the act, as set out in subsection 3(1) of the bill, be amended by striking out "5,000" in the last line and inserting in lieu thereof "7,500 and the number of persons engaged in the service of the public does not at any time exceed four."

Do we need any further discussion on that? We have had considerable discussion.

Mrs. Cunningham: I had ample time to explain my rationale.

Mr. Kanter: I think we had ample time to explain our concerns.

Mr. Chairman: Are we ready to vote on that further amendment by Mrs. Cunningham?

Mr. Hampton: I have a few comments. The four-employee rationale or confining the drugstore operation to under four employees is one that I think should be commended and looked at. Again, if we go back to where we started from in this debate, to the statements made by the Solicitor General in her first appearance before the committee, she said that basically the existing act is unenforceable. She said it was unfair. She said:

"Only last weekend, the Hy and Zel's department-drugstore in my home town of London opened in contravention of the spirit of the law. I use the term 'department-drugstore' because Hy and Zel's does not just sell prescription drugs and sundries. It was never the intention of the present law to allow this large kind of store to open and sell everything from wieners and cheese to hardware and clothing." Then she went on to say that there are abuses of the law all across the province.

My concern is that by adopting, as is proposed here, the 7,500-square-foot law, we really will not have changed things that much. We will still be into the situation where a drugstore-department store, if it plans its inventory carefully enough—and it may not even have to plan it that carefully—will basically be able to sell everything under the sun, whether it be clothing, groceries or some hardware items.

I think we are setting ourselves up—in fact, I firmly believe that—for the same kind of unfairness and the same kind of unenforceability that the minister noted as existing under the old act, and we could very soon have a situation where large grocery stores are pointing to the large drugstores and saying: "Why do these people have a special status under the act? Why are they allowed to stay open and sell hardware goods, groceries, household goods and perhaps even clothing?" That remains a very real possibility simply by means of planning the inventory very carefully.

Mrs. Cunningham's amendment is one that I in a sense took up with the minister back, again, on the opening day of the committee. We went into the issue of enforceability and unenforceability and the kinds of problems that were occurring. I pointed out to the minister that in fact in Manitoba the act in that province is fairly clear on this issue. Any store can open in Manitoba, no matter how large or how small. What you run into though is that you are limited to four employees or fewer. In other words, the government is saying essentially: "This legislation is legislation aimed at protecting the common pause day. It is legislation aimed at protecting as much as possible employees' being required to work on the common pause day."

So they are saying to those who want to open on Sunday: "If you want to open on Sunday, you can have only four employees. If you want to take a chance on your inventory or on shoplifting with only four employees, so be it." In Manitoba the natural result of that has been that a great number—in fact, I would say it is all large stores whether they be large drugstores, supermarkets or hardware stores—have simply said: "We are not interested in taking the chances. We are not interested in the problems that this is going to create."

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I suggest that in implementing the four-employees-or-less aspect in Manitoba, the government there has been able, first of all, to deal with and ward off the kinds of unfairness arguments that were heard about the old legislation in Ontario and, I would argue, will be heard with the new legislation, particularly when you have drugstores, which as the minister has said in her own statements, are not only drugstores but department stores of 7,500 square feet, which will be open to sell much more than prescription drugs. They could be open to sell a wide range of products.

As I say, I think we will hear complaints from hardware stores, grocery stores, clothing stores that this 7,500-square-foot situation is a most unfair one and it is creating the enforceability problems all over again.

As I say, the way to deal with that is to impose the four-employees-or-less limit. If a large store wants to take its chances with four employees, so be it. I predict, based on the Manitoba experience, that would not happen.

I want to go through with the committee the things we went through with the minister on the opening day, because I think they point that out. I said to the minister, and this is not an unusual experience in Manitoba, that you will see large drugstores, such as Howie's, which the minister referred to—

Mr. Chairman: Are you declaring a conflict of interest?

Mr. Hampton: No, I claim no ownership over the name Howie.

Mr. Campbell: That is how he got elected.

Mr. Chairman: Go ahead, I should not have interrupted you.

Mr. Hampton: Mr. Campbell refers to how different people got elected. I will not refer to how some of the Liberal members got elected.

Mr. Chairman: No, I do not think we will deviate from the amendments.

Mr. Hampton: In any case, if you were to go to Winnipeg, which is a large city—I would argue it has the potential for a large weekend market and a large weekend tourist shopping market—on drugstores such as the Howie's drugstores, you will see signs posted very openly on the front door which say, "Due to the government's decision to enforce the four-employees-or-less rule, we will not be open on Sundays."

That has done away with—and again I say that we ought to look at this—the situation where other stores which are not drugstores have to put up with a large drugstore—it might be a Shoppers Drug Mart, a Howie's, a Hy and Zel's or an independent drug mart—where you have this unending complaint about the unfair application of the act and the way that negatively impacts on some of the other stores.

I highly recommend Mrs. Cunningham's amendment, because if we do not have this kind of provision, I think we are no further ahead now that we were when we started this process. We are in a situation where I think the unfairness will be there and the difficulties of enforcement will be there again. I think we will see a never-ending process of court challenges to the

application of the act, and I do not think we will have improved the process one little bit. I think all members should look at the application of the four-employees-or-less rule. It is one that would do great service to this legislation.

Mr. Campbell: On just two comments that I think were stated by the previous speaker, one is that by 7,500 square feet you will automatically get into a lot of lines that you may not get into during the week or you may deal with. I would think, judging by what I do know about retail, with that square footage, you can only carry so much merchandise, and therefore with that size, a number of delegations before this committee have said they need the square footage in order to sell the merchandise. I am not too sure there would be any other way to cram in more merchandise and also fit in the game plan that you are already into in marketing or retail.

I am not sure it would change the strategy much more than what they would normally do the rest of the business week. As well, the bigger stores that I guess are being referred to by being over that size would make other arrangements, I am sure, to market their products in the time that is available to them.

That is basically all I have to address on that issue.

Mr. Chairman: Before we proceed to vote, I am going to have legislative counsel read the amendment in its appropriate form so we will all know what we are voting on.

Mr. Revell: To add words to Mrs. Cunningham's mouth a little bit here, "I move that clause 3(2)(c) of the act as set out in subsection 3(1) of the bill be amended by striking out '5,000 square feet' in the last line and inserting in lieu thereof '7,500 square feet and the number of persons engaged in the service of the public in the pharmacy does not at any time exceed four.'"

Mr. Chairman: Are we ready to vote? You have heard the motion.

Mrs. Cunningham: Just a comment in support of my colleague. In talking about the Manitoba law, just to let the members know, that law has been in effect since 1978 and therefore employee restriction applies to all retail stores. Drugstores can have more than four employees in Manitoba, but basically retail stores are the ones that have the four-employee restriction.

Mr. Chairman: Is that a correction?

Mrs. Cunningham: I think the key point in Manitoba that is written in its legislation, which the committee should be aware of, is that they must have the sale of pharmaceutical, hygienic and therapeutic goods as their principal business. I must say that really ought to be the intent of this particular piece of legislation. In fact, if the government is concerned about meeting the real concerns of the members of the public as they have presented their positions to us—I am now talking about the very large discount drugstores, as well as the small retail stores—that ought to be the principle behind this legislation for drugstores. I should ask Mr. Kanter if he has in fact given that concept or requirement any consideration.

Mr. Kanter: Certainly, the answer to that question is yes. In fact, the current legislation and the future bill will contain a clause almost precisely in the words of Mrs. Cunningham to state that the principal business

of a pharmacy is the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes and no other goods are available for sale except as sundries. That clause is in the current act; that clause will be retained when Bill 113 is passed.

Mrs. Cunningham: Furthermore, has that worked in the past? How will it be different now? What is the intent? Given the input that we have heard all summer, what is going to be different with regard to the principal business of the pharmacy with the amendments to the legislation in Bill 113?

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Mr. Kanter: I am not entirely sure if I can answer that question. I have had no particular experience in the enforcement of the existing act. It may be that Mr. Spring has information to bring before the committee on that point. I do not have any information, personally.

Mr. Spring: I am not sure I have anything useful to add. I will say this: In so far as the legislation does not change the situation with respect to enforcement—in so far as that particular clause is concerned—I see no reason why it would change. The amendments to the bill do not change that particular section referred to by Mr. Kanter.

Mrs. Cunningham: So I am assuming, because what we were getting from the government were amendments to improve upon the existing legislation, that that particular objective—that is, that the principal business of the pharmacy is the sale of goods of a pharmaceutical or therapeutic nature—is something that has been working in the past and something that the government is not particularly concerned about with regard to the future.

Mr. Kanter: We have had it in the past, in the present and for the future.

Mrs. Cunningham: I just wanted that to be on the record because that is, in fact, one of the concerns of the public that perhaps the government should be addressing, and I am now talking about the inventory of the stores. If one is wanting to be 100 per cent thorough in repairing legislation that the government says is not working, I would have thought that that would have been one of the areas where we may have seen some tightening up with regard to this legislation, the intent of enforceability or whatever. I am just making those observations because it was of concern and it is not being dealt with, and it is however not of particular concern to ourselves.

Mr. Chairman: Thank you. Are we ready to vote? We have had the amendment as proposed and properly worded by legislative counsel read to you. Are we ready?

Those in favour of the amendment by Mrs. Cunningham?

Those opposed?

Motion negatived.

Mr. Chairman: We now come to the amendment previously proposed by Mr. Kanter. I will read it again for the benefit of all of you. It was moved on November 29, so I will read it again.

Mr. Kanter moved that clause 3(2)(c) of the act as set out in subsection

3(1) of the bill be amended by striking out "5,000" in the last line and inserting in lieu thereof "7,500."

Do you have any comments, Mr. Kanter?

Mr. Kanter: I made comments previously.

Mr. Chairman: Do any other members wish to to comment? Mr. Hampton.

Mr. Hampton: As I indicated earlier, the committee has had a never-ending supply of information on this issue as to the appropriate size of the drugstore which would serve most communities of the province, which would meet the needs of different communities in the province and so on. Depending on which information you read, whether it came in July, August, September, October or later on, you get a different impression of what the problem really is, and I find that situation an unnerving one.

I am not comfortable with making a decision on such an important issue, where we have been bombarded by information yet in the process of being bombarded by information have not had a chance to look carefully at and to have a number of questions answered as to why there is such a great conflict in some of the information we have been provided with.

As I say, I find it difficult to make a decision when I am faced with that kind of situation. I would like to know why there is such a conflict in the information. I would like to know what the rationale is for the conflict. I would like to know why one organization can come to us and say, "Well, 50 per cent of what we sell on Sunday from our drugstores is prescription drugs and hygienic products," whereas from another organization we will get a report that says, "No, if you look earlier on in trade statistics, you'll see that's not true: the percentage of that particular chain's sales, when it remains open on Sunday, isn't anywhere near 50 per cent prescription drugs."

I find that conflict of information a real problem. Therefore, I am not at all comfortable with the situation we have been placed in. For example, just to add to the pot, I referred previously to some of the various submissions we had received. On October 28, there was a memorandum to all members and substitute members of the committee—

Mr. Chairman: I do not like to interject, but we are back to the same issue we were at before. First, to raise it you may have those concerns but there is no way to rectify it, because this committee has already voted that it will not—

Mr. Hampton: I just want to get my objections on the record once again, Mr. Chairman.

Mr. Chairman: Maybe we can just refer to page whatever of Hansard. It is out of order, in essence repeating yourself and that is why—

Mr. Hampton: I am not going to refer to any of the material I referred to before. Okay? This is a memorandum from the clerk of the committee. She says: "I am enclosing for your information submissions related to Bills 113 and 114 that recently have been received. They have not been given formal exhibit numbers."

One of the submissions is the impact of Sunday closing on Ontario's discount drugstores and it is a submission of September 15, 1988, from the

Ontario Discount Drugstore Association. It is a lengthy brief. It deals with Hy and Zel's, Herbies, Drug World and with a number of drugstores. It talks about the percentage of their sales on Sunday which are related to prescription drugs and to hygienic products. It deals at length with the percentage of their sales on Sundays which deal with things other than prescription drugs and hygienic products.

Mr. Chairman: That is interesting information, but how are you speaking to the amendment with that information?

Mr. Hampton: The minister said in her initial comments to this committee that this was a very important issue and a very difficult issue. In her initial statements, in her questions to Mrs. Marland, in her questions to myself, in her questions to Mr. Philip and I also believe in her questions to Mrs. Cunningham, she said over and over again, "This is a very, very difficult issue and we want the committee's decision and guidance on this."

My point, again, is that we have a variety of conflicting information here, yet there has been no discernible way we have thrashed out all that conflicting information. So here the committee has this amendment, yet what we have behind it is a large load of conflicting information.

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In saying that, I do not denigrate the efforts of the research officer. I think the rational thing we should have done was to have gone through this material rather carefully to attempt to get out of it—

Mr. Chairman: I have to bring you back to order. You have gone through that before. I do not see where that has any relevance to the amendment we are discussing.

Mr. Hampton: The amendment is there. I am simply trying to point out again that the rational basis for the amendment, either to support it or support it in part or not to support it, is not plainly there.

Mr. Chairman: I stand to be corrected, but my recollection of looking at the material provided by our research officer—we gave her direction, Mr. Philip had a chance to see it and it has not been raised before—is that it does not appear to be inconsistent in that regard. I do not know where your inconsistencies are, but in any event we are discussing the square footage.

Mr. Hampton: That is right.

Mr. Chairman: I would like to bring you back to the amendment and address the amendment.

Mr. Hampton: I think I am addressing the amendment. If the amendment is there, it has to have a rational basis. It has to have some evidence that says 7,500 is better than 5,000 is better than 10,000. All we have is a collection of information. Some of it says 10,000 is best, some says 5,000 is best, some says 7,000 is best, yet at no point has there been a cutting and slicing of this information.

Mr. Chairman: Mr. Hampton, in deference to our research officer, one requirement I do have is to make certain our staff is not misinterpreted, and you are. I would like to give the research officer an opportunity to find out

whether what you are saying is correct. I am going to ask her to do that, because you are indicating that there is this conflict.

Mr. Hampton: Before you do that, I would like to put plainly to you what the problem is. If the Ontario Discount Drugstore Association put to us a 20-page brief wherein it set out a number of criticisms of arguments that have been put forward by other groups, or it makes a number of allegations and then comes forth with recommendations—

Mr. Chairman: Who is this?

Mr. Hampton: Just to cite one, it is the Ontario Discount Drugstore Association, September 15, 1988, on the impact of Sunday closing.

Mr. Chairman: Again, the difficulty is that because Mr. Philip is here at one time and you are at another time, that information was placed in the hands of the research officer, and on the basis of that, further research was done.

Mr. Hampton: Yes, I understand that.

Mr. Chairman: There are many areas here during our public hearings where there were perhaps discrepancies on one side or the other. We have had the public hearings. Unless you are moving to reopen the public hearings, you are really faced with a number of pieces of information in a lot of areas where there is not necessarily consistency on all points. I think that is legitimate. You would never expect to hear the same thing from all people. I do not think they are being necessarily misleading. It is just that they take a different approach, I guess.

Mr. Hampton: No one is suggesting that anyone is being misleading. What I would appreciate, what I think would be helpful and would make decision-making a lot more comfortable, would have been a situation where we could have refuted or could have had lengthier explanations as to why there was such disagreement and such conflict in some of the information. Mr. Philip may not have raised that previously. I am not bound by Mr. Philip's comments. He is not bound by mine. Again, I sat down last night and I went through it. I find it still a very confusing situation.

Mr. Chairman: Maybe we will let the research officer indicate it. I suppose what you are saying is that square footages that are being offered by one group are not borne out by our research. Is that what you are saying? Are you saying there are inconsistencies? Specifically with reference to the question of the amendment before us, which is 7,500 square feet, are you saying that is the case?

Mr. Hampton: I am saying that there is great divergence of opinion. When you go back to day one and the minister's opening statements and you follow the different submissions that have come in, it is very difficult to sort through all of that and then be able to say at the end of it, "I see where and why there are discrepancies and I see how you can come out of this with a more rational position." That is my problem.

Mr. Chairman: I am going to let the research officer answer, because I understood from her answer to Mrs. Cunningham's question earlier that that is not the case.

Ms. Swift: Perhaps you could indicate which inconsistencies, because as far as the research that we—

Mr. Kanter: You have asked the research officer to make some comments. I think that is appropriate providing the comments are in the context of this particular motion. I do not think it would be appropriate to have a dissertation on the research that has been done. I do not think that is the stage we are at in clause-by-clause, at this point. I think you have been quite correct in attempting to bring Mr. Hampton to order to deal with this particular motion. I would request that the same general restraints be applied to the research person—that is, how this research relates to this particular clause.

Mr. Chairman: Do you understand Ms. Swift?

Ms. Swift: Yes, I do. But if you could direct me to the inconsistencies, perhaps I can help you. I did not find any inconsistencies in the research that I presented to the committee.

Mr. Hampton: I do not claim to find a particular inconsistency in your information at this stage.

Mr. Chiarelli: Try some other way to filibuster, Howie. Come on.

Mr. Hampton: What I find difficult is—and perhaps you disagree with me—that we have had information from Shoppers Drug Mart and they said this is the case. They have given a list of stores. Then we have information from—

Mr. Kanter: It is not. This gentleman is not a fool of the staff to evaluate the various briefs that various parties have put in. Now I think Mr. Hampton is trying to avoid his responsibility as a legislator. His job is to listen to the briefs, evaluate the briefs, vote on this particular motion—vote for it, vote against it, suggest an alternative. I do not think it is at all fair for him to pin responsibility for his job on someone else. I think that is unfair, improper and very bad treatment of the staff who have served this committee extremely well.

Mr. Hampton: If I can respond to Mr. Kanter's accusations. I have simply said in this that I did my best last night to go from beginning to end of this information and to arrive at some consistencies to it.

Mr. Kanter: Frankly, your job is to vote on this amendment.

Mr. Hampton: I do not need Mr. Kanter to tell me what my job is. I do not think Mr. Kanter has a position to tell anybody what his job is. He can tell seals what their job is.

Mr. Chairman: Order. This was originally a point of order. Mr. Hampton, as long as you address yourself within the framework of the amendment I will allow you to continue to speak on that issue. I think what you have done is taken issue with the information we have received from all sources. The committee, I presume, through its decisions not to hear further presentation of these conflicting views you talk about, has decided to rely upon the independent research people who advise all of us, not on a partisan basis.

Mr. Hampton: No disagreement.

Mr. Chairman: All right, well that is the information. She has indicated to you that there is no inconsistency. I really do not see what is

achieved or how you are in order within the framework of the amendment by continuing to refer to it.

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Mr. Hampton: The last time I checked we were still permitted to express an opinion on the evidence that is there. As I said, after going through all the information again last night, I still find I am not persuaded on all this. Being not persuaded on all this, I find it very difficult to make a clearly informed decision as to whether the limit ought to be 5,000 square feet, 7,500 square feet or 10,000 square feet.

Mr. Kanter: Sometimes politics requires tough decisions. Let's see you make this one. Let's see you get on with this.

Mr. Chairman: He will not get on with it if we interject, so let's just let him finish.

Mr. Kanter: He won't get on with it.

Mr. Chairman: We have had opportunities where we were close to a vote and there have been further members who wished to speak. Mr. Hampton has the floor at the moment.

Mr. Chiarelli: On a point of order: I would like to move that we let him ramble for another 10 minutes and then we can adjourn.

Mr. Chairman: That is not a point of order and that does not help.

Mr. Hampton, I am going to be restrictive.

Mr. Hampton: I have made my point on that part. Now I want to go on to the next part.

Interjections.

Mr. Chairman: Could we have order so that Mr. Hampton can finish?

Mr. Hampton: My point is again that we are in a situation where, if all we have is a 7,500-square-foot limit, we are placed in the situation that the minister referred to when we first began consideration of the bill.

Mr. Chairman: Are you speaking to a greater amount? That has already been dealt with.

Mr. Hampton: No, I am not. I am speaking to the 7,500-square-foot limit.

The minister said on the opening day, in her statement, that because there were large drugstores—and she called them drugstore-department stores—that were selling prescription drugs and hygienic products but were also of such large size that they were able to sell a great number of other products not related to prescription drugs and not necessarily related to hygienic products; she found the act unfair and for that reason in part unenforceable.

I do not see where we have come a great distance if we still have a situation where there are 7,500 square feet. You will have a good number of

grocery, hardware and clothing stores which may be under the 7,500--square--foot limit, that under the terms of this legislation will be closed and forced to remain closed.

I say it again, we are going to run into the same situation where there will be a constant cry that this legislation is unfair. You invite the situation where a department store or a large store of any kind may want to have or may put in a small drug counter and have a contracted pharmacy station—

Mr. Chairman: Can I interrupt for just one second? I am not sure everyone is cognizant of the fact that we are having a stacked vote at 5:45 p.m., I believe. There are people who are here today, who were here yesterday and I am sure they would like to see some finality to this. If there is not to be finality, let's let them go home and we will go up for the vote at 5:45 p.m. I do not know whether there is; I am just asking, and I remind you that there is a vote.

Mr. Hampton: As I said, I have just this one last point to make.

Mr. Runciman: I might as well interject to say that we have a number of other points that we wish to raise as well, so we may as well follow your direction.

Mr. Chairman: I wanted the people to be aware of that so they did not sit around needlessly for the next 15 minutes, if we are not going to finish.

That information having been garnered—thank you, Mr. Runciman—at least that lets the people who are interested in the issue, if they wish to leave—We are going to be going upstairs, probably in about another minute or so. I think the bells will ring.

Mr. Kanter: Perhaps the opposition member might want to read the editorial from her own home-town newspaper, "Get on with Sunday law," as it says in the London Free Press this morning.

Mr. Chairman: We can read that afterwards.

Mr. Kanter: Perhaps you might want to take a look at that in the last few moments.

Mrs. Cunningham: Why are you chewing me out? I am not holding you back.

Mr. Kanter: Your colleague has indicated that he intends to hold this committee up still further.

Mrs. Cunningham: Is it not interesting that you should read the London Free Press editorial and be influenced by it, and I do not?

Mr. Chairman: Why do you two not step outside?

Mrs. Cunningham: I am not influenced by it. I want to get the answers to our questions so we can get good legislation. I would not even look at that before I came in here.

Mr. Chairman: Order.

The committee adjourned at 5:45 p.m.

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